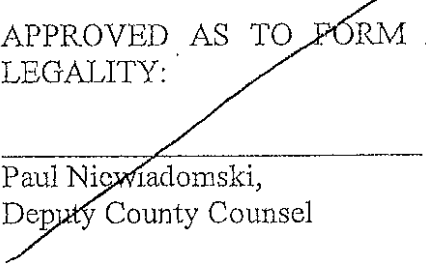


KB Homes/Milpitas RDA/County MOU

Continuation signature page: In Witness Whereof, Agency has by order of the Agency Board of Directors caused this Memorandum of Understanding to be subscribed by the Executive Director of the Agency by Resolution No. KA 220 and attested by the City Clerk thereof, the City has by order of the City Council caused the same to be subscribed by City Manager of the City by Resolution No. 740 and attested by the City Clerk thereof, and KB Home South Bay Inc. and the County have executed the same this 18th day of May, 2004.

APPROVED AS TO FORM AND
LEGALITY:


Paul Niewiadomski,
Deputy County Counsel


"CITY"

City of Milpitas

By: 

City Manager

Attest:


Gail Blalock, City Clerk

Approved as to Form:



Steven T. Mattas
City Attorney

EXHIBIT A
LEGAL DESCRIPTION OF SELLER'S ENTIRE PROPERTY

LEGAL DESCRIPTION

Real property in the City of Milpitas, County of Santa Clara, State of California, described as follows:

Parcel One:

Parcel "B" as said Parcel is shown on that Map entitled, "Record of Survey", filed March 7, 1963, in Book 157 of Maps, at page 56, in the Office of the County Recorder of Santa Clara County.

Excepting all that portion described in the Deed to the State of California, recorded July 3, 1970, in Book 8975 Official Records, page 149, Santa Clara County Records.

Also excepting therefrom that portion thereof as conveyed to Santa Clara Valley Water District, a public corporation by deed recorded June 23, 1973 in Book B476, page 309, Official Records.

Parcel Two:

Parcel C as shown on a Parcel Map filed for record on March 7, 1963 in Book 157 of Maps, page 56.

Excepting therefrom that portion thereof as conveyed to Santa Clara Valley Water District, a public corporation by deed recorded June 23, 1973 in Book B476, page 309, Official Records.

Also excepting therefrom that portion thereof as conveyed to the City of Milpitas, a municipal corporation by deed recorded July 16, 1992 in Book M283, page 11, Official Records.

Also excepting therefrom that certain parcel conveyed to the City of Milpitas, a municipal corporation by Deed recorded February 28, 1994 in Book N324, Page 1369 of Official Records.

Also excepting therefrom that certain parcel conveyed to the City of Milpitas, a municipal corporation by Deed recorded May 4, 1994 in Book N428, Page 657 of Official Records.

Also excepting therefrom that certain parcel conveyed to the City of Milpitas, a municipal corporation by Deed recorded May 27, 1997 as Document No. 13718084 of Official Records.

Parcel Three:

A strip of land 80 feet wide lying 40 feet either side of the following described line and extensions thereto across that certain 100 acre tract of land conveyed by James Boyd to the County of Santa Clara, by deed dated December 22, 1883 and recorded December 22, 1883, in Book 71 of Deeds, page 492 and across that certain 96.11 acre tract of land conveyed by Mary T. O'Toole, et al, by the County of Santa Clara by Deed dated October 7, 1901 and recorded October 21, 1901 in Book 248 of Deeds, page 91, said line being more particularly described as follows:

Beginning at a point in the common boundary between the 96.11 acre tract of land hereinabove referred to and that certain 25.0 acre tract of land described in the Deed from Frances A. Correa to Joe Marianelli, et ux, dated March 27, 1945 and recorded March 3, 1945 in Book 1244, of Official Records, page 558, distant thereon S. 25° 30' E. 511.05 feet from the most Northerly corner of said 25.0 acre tract; thence N. 65° 08' E. 3265 feet, more or less, to the Easterly line of the 100.0 acre tract of land hereinabove referred to in the center of the Penitencia Creek, the

Westerly end of said strip being the said common boundary between said 96.11 and 25.0 acre tracts of land and the Easterly end of said strip being the Easterly line of said 100.0 acre tract of land in the center of the Penitencia Creek, being a part of the Ellen E. White portion of the Esteros Rancho.

Parcel Four:

Beginning at the point of intersection of the Easterly line of Abel Street, as established by the deed recorded December 24, 1959 in Book 4646, page 463 of Official Records, and the Southerly line of the lands of the City and County of San Francisco, a Municipal Corporation, as described in the Final Decree in Condemnation recorded December 8, 1950 in Book 2112, page 7 of Official Records, said point of beginning also being the Northwestern corner of Parcel "D", as said Street and Parcel are shown upon that certain Map entitled, "Record of Survey being a portion of Los Esteros and Milpitas Ranchos in City of Milpitas, California", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on March 7, 1963 in Book 157 of Maps at page 56; thence from said point of beginning along the Southerly line of the land of the City and County of San Francisco and the Northerly and Easterly line of said Parcel "D" for the following courses and distances: North 65° 00' 10" East 188.29 feet, North 65° 00' 30" East 26.61 feet, South 49° 22' 40" East 96.99 feet, South 34° 17' 30" East 177.30 feet, South 11° 57' 30" East 257.07 feet, South 34° 46' 30" East 157.01 feet, South 47° 28' 50" East 49.02 feet and North 61° 06' 10" East 40.39 feet to a point in the Westerly line of Main Street, also known as San Jose-Oakland Road; thence Southeasterly along said Westerly line of Main Street, along an arc of a curve to the left, from a tangent bearing South 14° 09' 50" East, with a radius of 4030.00 feet, through a central angle of 4° 44' for an arc distance of 332.93 feet; thence South 18° 53' 50" East continuing along said Westerly line of Main Street for a distance of 329.66 feet to the point of intersection thereof with the Northerly line of Curtis Avenue, as said line was established by Deed from the County of Santa Clara, to the City of Milpitas, dated August 5, 1963, recorded August 23, 1963 in Book 6162 Official Records, page 684, Santa Clara County Records; thence along said Northerly line of Curtis Avenue for the following courses and distances: South 72° 08' 19" West 15.00 feet; thence Southwesterly along an arc of a curve to the right, with a radius of 20.0 feet; through a central angle of 90° 47' 13", for an arc distance of 31.69 feet; thence on a compound curve to the right, with a radius of 4753.38 feet, through a central angle of 5° 54' 54", for an arc distance of 490.72 feet and Northwesterly on a compound curve to the right, with a radius of 20.00 feet, through a central angle of 90° 47' 13" for an arc distance of 31.69 feet to the point of intersection thereof with the said Easterly line of Abel Street; thence North 11° 24' 30" West along said Easterly line of Abel Street for a distance of 1312.31 feet to the point of beginning, and being a portion of Parcel D, as said Parcel is shown upon the Record of Survey Map hereinabove referred to.

Excepting therefrom that portion thereof as conveyed to the City of Milpitas, by deed recorded April 2, 1969 in Book 8484, page 90 of Official Records, more particularly described as follows:

Beginning at the Northeasterly corner of that certain 3.281 acre parcel of land in the Westerly line of San Jose-Oakland Road, also known as Main Street, as said Parcel and Road are shown upon that certain Map entitled, "Record of Survey being a portion of Los Esteros and Milpitas Ranchos in the County of Santa Clara, State of California", which Map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on October 24, 1968 in Book 244 of Maps at page 4; thence from said point of beginning along the Northerly, Northwesterly and Westerly lines of said 3.281 acre parcel of land for the following courses and distances; South 61° 11' 25" West 40.43 feet, North 47° 26' 20" West 20.00 feet, South 39° 49' 40" West 210.71 feet, South 17° 21' 38" East 233.89 feet and South 18° 52' 50" East 343.42 feet to the Southwesterly corner thereof in the Northerly line of Curtis Avenue (60 feet in width), as said line was established by Deed from the County of Santa Clara, to the City of Milpitas, dated August 5, 1963, recorded August 23, 1963 in Book 6162 Official Records, page 684, Santa Clara

County Records; thence Easterly along the said Northerly line of Curtis Avenue, along an arc of a curve to the left, from a tangent bearing North $74^{\circ} 08' 40''$ East, with a radius of 4753.38 feet, through a central angle of $2^{\circ} 15' 10''$, for an arc distance of 186.89 feet; thence on a compound curve to the left, with a radius of 20.00 feet, through a central angle of $90^{\circ} 47' 10''$, for an arc distance of 31.69 feet; thence North $71^{\circ} 06' 20''$ East 15.00 feet to a point in the said Westerly line of San Jose-Oakland Road; thence North $18^{\circ} 53' 40''$ West along said Westerly line of San Jose-Oakland Road for a distance of 329.66 feet; thence Northerly along an arc of a curve to the right, tangent to the preceding courses with a radius of 4030.00 feet, through a central angle of $4^{\circ} 44' 05''$ for an arc distance of 333.02 feet to a point of beginning and being all of that certain 3.281 acre parcel of land as shown upon said Record of Survey Map hereinabove referred to.

APN: 086-05-003, 005, 006, 009, 021; 086-11-013
ARB: 86-5-2, 3, 4; 86-11-7

EXHIBIT B

DESCRIPTION OF PARCEL A, PARCEL B, PARCEL C AND PARCEL D
DRAWING OR GENERAL DESCRIPTION TO BE REPLACED BY A BOUNDARY
SURVEY TO BE PREPARED BY BUYER



NOTE:
DIMENSIONS ARE BASED UPON
RECORD DRAWINGS

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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ELMWOOD SITE
PARCEL B / PARCEL D
OFF EXHIBIT

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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City of Milpitas 2002 Affordable Unit Ownership Assumptions

	Household Income (a)	Sale Price	Down Payment (b)	Total Mortgage	Monthly Payment	Monthly Property Tax (c)	Monthly Insurance & HOA Dues (d)	Total Monthly PITI (e)
Very Low Income - 50%								
1 Person HH - Studio	\$37,150	\$110,447	\$22,089	\$88,357	\$558.48	\$101.24	\$269.03	\$928.75
2 Person HH - 1 Bedroom	\$42,450	\$130,528	\$26,106	\$104,422	\$660.02	\$119.65	\$281.58	\$1,061.25
3 Person HH - 2 Bedrooms	\$47,750	\$150,609	\$30,122	\$120,487	\$761.56	\$138.06	\$294.13	\$1,193.75
4 Person HH - 3 Bedrooms	\$53,050	\$170,690	\$34,138	\$136,552	\$863.10	\$156.47	\$306.68	\$1,326.25
5 Person HH - 4 Bedrooms	\$57,300	\$186,793	\$37,359	\$149,434	\$944.53	\$171.23	\$316.75	\$1,432.50
Low Income - 80%								
1 Person HH - Studio	\$59,400	\$194,750	\$38,950	\$155,800	\$984.76	\$178.52	\$321.72	\$1,485.00
2 Person HH - 1 Bedroom	\$67,900	\$226,955	\$45,391	\$181,564	\$1,147.61	\$208.04	\$341.85	\$1,697.50
3 Person HH - 2 Bedrooms	\$76,400	\$259,161	\$51,832	\$207,329	\$1,310.46	\$237.56	\$361.98	\$1,910.00
4 Person HH - 3 Bedrooms	\$84,900	\$291,367	\$58,273	\$233,093	\$1,473.31	\$267.09	\$382.10	\$2,122.50
5 Person HH - 4 Bedrooms	\$91,650	\$316,942	\$63,388	\$253,554	\$1,602.63	\$290.53	\$398.09	\$2,291.25
Median Income - 100%								
1 Person HH - Studio	\$73,850	\$249,499	\$49,900	\$199,600	\$1,261.61	\$228.71	\$355.94	\$1,846.25
2 Person HH - 1 Bedroom	\$84,400	\$289,472	\$57,894	\$231,578	\$1,463.73	\$265.35	\$380.92	\$2,110.00
3 Person HH - 2 Bedrooms	\$94,950	\$329,445	\$65,889	\$263,556	\$1,665.86	\$301.99	\$405.90	\$2,373.75
4 Person HH - 3 Bedrooms	\$105,500	\$369,418	\$73,884	\$295,535	\$1,867.98	\$338.63	\$430.89	\$2,637.50
5 Person HH - 4 Bedrooms	\$113,950	\$401,435	\$80,287	\$321,148	\$2,029.87	\$367.98	\$450.90	\$2,848.75
Moderate Income - 120%								
1 Person HH - Studio	\$88,600	\$361,335	\$72,267	\$289,068	\$1,827.11	\$331.22	\$425.83	\$2,584.17
2 Person HH - 1 Bedroom	\$101,300	\$417,474	\$83,495	\$333,979	\$2,110.98	\$382.68	\$460.92	\$2,954.58
3 Person HH - 2 Bedrooms	\$113,950	\$473,392	\$94,678	\$378,714	\$2,393.73	\$433.94	\$495.87	\$3,323.54
4 Person HH - 3 Bedrooms	\$126,600	\$529,310	\$105,862	\$423,448	\$2,676.48	\$485.20	\$530.82	\$3,692.50
5 Person HH - 4 Bedrooms	\$136,750	\$574,177	\$114,835	\$459,342	\$2,903.35	\$526.33	\$558.86	\$3,988.54

Notes:

a) From California Dept. of Housing and Community Development.

b) Mortgage terms:

Annual Interest Rate (Fixed)

Term of mortgage (Years)

Percent of sale price as down payment

c) Initial property tax rate (Annual)

6.50%

30

20%

1.10%

25%

d) Annual insurance rate as percent of sale price
Homeowner's Dues

e) PITI = Principal, Interest, Taxes, and Insurance

Percent of household income available for PITI (V. Low, Low, Median)

Percent of household income available for PITI (Moderate)

0.75%

\$200

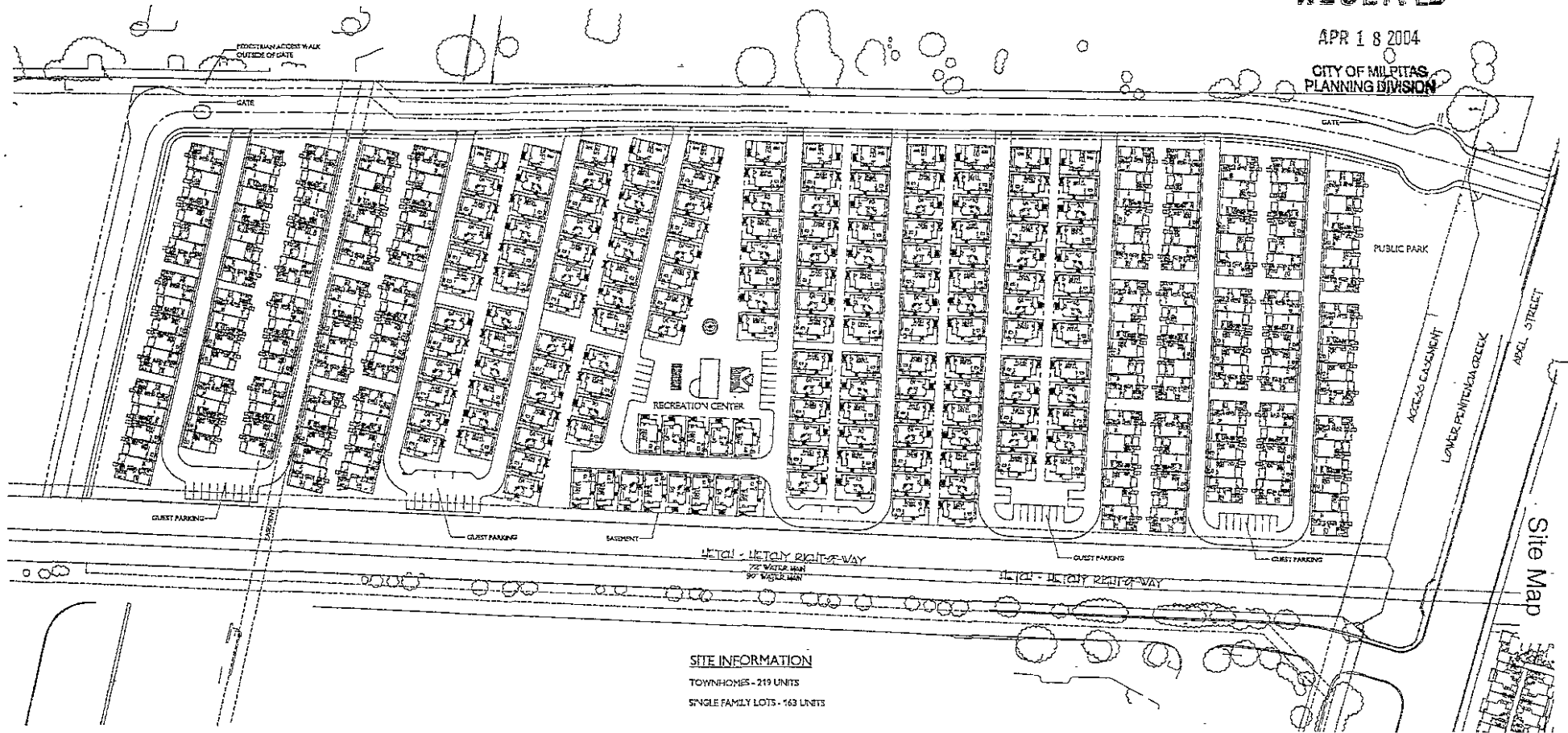
30%

35%

RECEIVED

APR 18 2004

CITY OF MILPITAS
PLANNING DIVISION

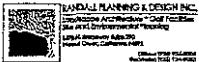


SITE INFORMATION

TOWNHOMES - 219 UNITS

SINGLE FAMILY LOTS - 163 UNITS

CONCEPTUAL SITE PLAN
ELMWOOD
MILPITAS, CALIFORNIA



Date: 15 APRIL 2004

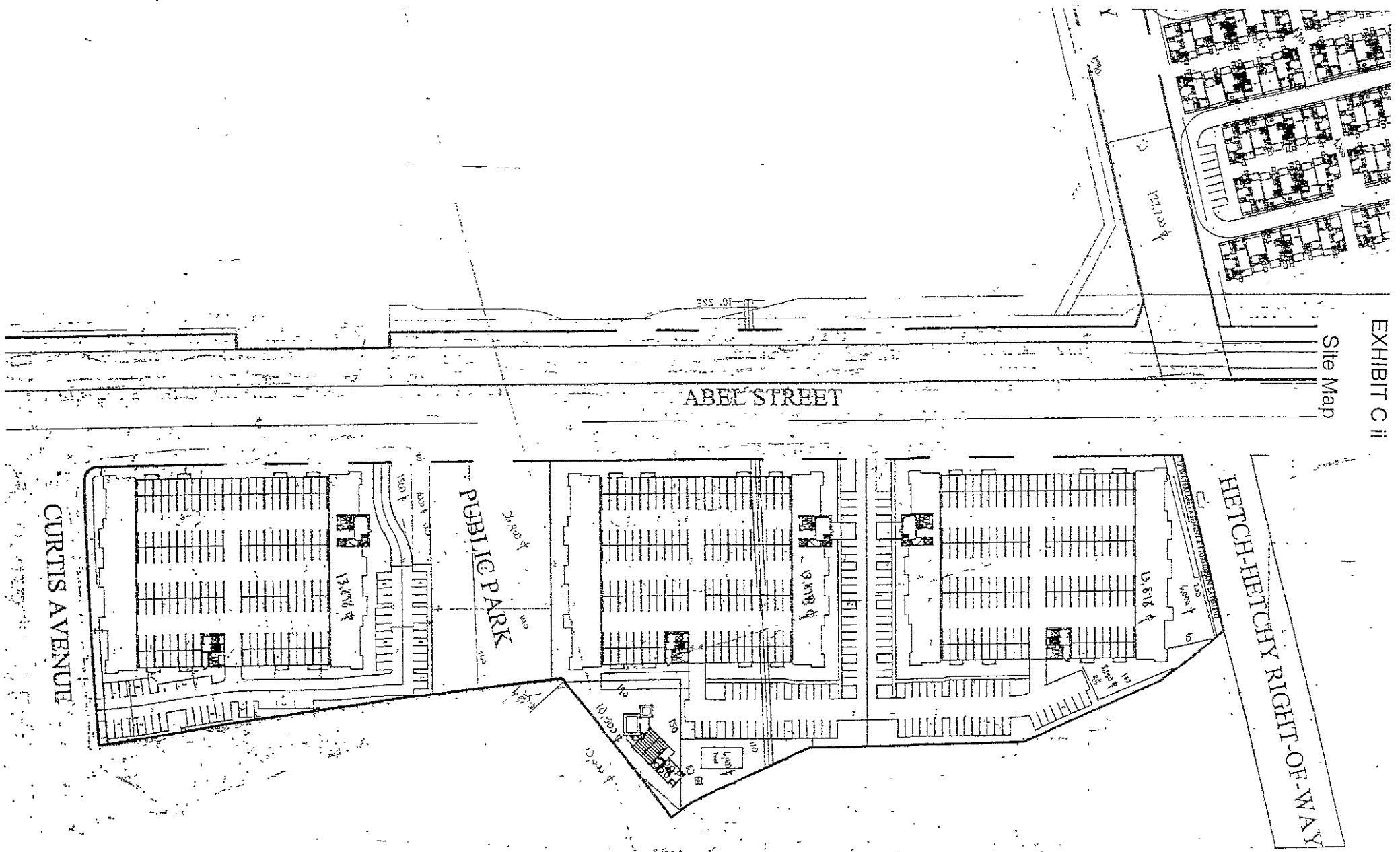


EXHIBIT C1

Site Map

EXHIBIT C ii

Site Map



Preliminary
Distribution Plan
to Follow

EXHIBIT D

RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035

To be recorded without fee.
(Gov. Code, §§ 6103 and 27383.)

(Space Above This Line For Recorder's Use Only)

**RESALE RESTRICTION AGREEMENT
AND OPTION TO PURCHASE**

Owner: _____

Property Address: _____
Milpitas, California _____

Name of Development: KB Home

This RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT ("Agreement") is entered into by and between the Redevelopment Agency of the City of Milpitas ("the Agency") and _____ ("Owner") regarding certain improved real property, which is more particularly described in Exhibit A attached hereto and incorporated herein and commonly known as _____, Milpitas, CA _____ (the "Property") effective as of _____, 20__ ("Effective Date"). Agency and Owner are hereinafter collectively referred to as the "Parties."

RECITALS

A. The Agency pursuant to the Community Redevelopment Law (Health & Safety Code section 33000 et seq.) and the Agency's Redevelopment Plan maintains an affordable housing fund, which it uses for the purpose encouraging the construction of housing within the Redevelopment Plan Area that is affordable to persons of very low, low, and moderate income ("the Program").

B. Pursuant to the Program, the Agency and KB Homes Southbay, Inc. ("Developer") entered into a Memorandum of Understanding, dated ____, 2003 and an Owner Participation Agreement, dated ____, 2003 (collectively "the Agreements") under which Developer has agreed to construct and sell 110 homes at prices that are affordable to persons of moderate incomes and in exchange the Agency has agreed to provided certain financial incentives.

C. Owner is the owner of certain real property located within the City of Milpitas, legally described in Exhibit A and commonly known as ____, Milpitas, CA ____ ("the Property"). The Property is one of the affordable homes constructed by Developer pursuant to the Agreements.

D. Owner is an eligible moderate-income purchaser under the Program, intends to live in the Property as an owner occupant, and agrees to maintain the Property as Owner's principal residence.

E. In order to maintain and preserve the Property as housing affordable to eligible moderate-income purchasers, it is necessary to restrict the use and resale of the Property through imposition of the occupancy and resale restrictions set forth in this Agreement. These restrictions are intended to prevent initial and subsequent purchasers from using the Property for purposes incompatible with the Program and realizing unwarranted gains from sales of the Property at unrestricted prices. The terms and conditions of this Agreement are intended to provide the necessary occupancy and resale restrictions to ensure that the Property is used, maintained, and preserved as housing affordable to eligible moderate-income purchasers. To further serve the purposes of the Program, it is necessary that the Agency be granted an option to purchase the property so that the property may be resold by the Agency to an eligible household.

F. Accordingly, the Parties desire to enter into this Resale Restriction and Option to Purchase Agreement, which provides, generally, that Owner may only sell the property to Eligible Households (i.e. households meeting the household income limitations set forth herein) at a price not to exceed the price equal to the initial purchase price adjusted to reflect increases in median household income since the Property was initially purchased by Owner. Alternatively, the Agreement provides that the City may exercise its option to purchase the Property at the same price.

G. The Property constitutes a valuable community resource by providing decent, safe, and sanitary housing to persons and families of moderate income who otherwise would be unable to afford such housing. To protect and preserve this resource it is necessary, proper, and in the public interest for the Agency to administer occupancy and resale controls consistent with the Program by means of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the substantial economic benefits inuring to Owner and the public purposes to be achieved under the Program, Owner and Agency hereby agree as follows:

1. Definitions.

(a) "Affordable Unit Cost" shall mean a sales price that results in annual housing costs, including principal payments, interest, property taxes, homeowners' insurance, homeowners' association dues, and mortgage insurance, that do not exceed 30% of income level for the Eligible Household.

(b) "Area Moderate Income for Santa Clara County" means those income and eligibility levels determined, updated, and published each year by the California Department of Housing and Community Development, based on Santa Clara County median income levels, adjusted for household size.

(c) "Persons and families of moderate income" means persons and families whose income do not exceed one hundred twenty percent (120%) of the Area Median Income for Santa Clara County, as adjusted for household size.

(d) Persons and families meeting the definition set forth in Paragraph 1(b) above shall be referred to as "Eligible Households."

2. Program Requirements.

(a) Affordability Restrictions. Owner hereby covenants and agrees that during the term of this Agreement all of the requirements and restrictions of this Agreement shall apply, and the Property shall be sold or otherwise transferred only pursuant to the terms and conditions of this Agreement and only to (i) Eligible Households at a price not to exceed the Adjusted Resale Price, as defined in Paragraph 5, (ii) the Agency pursuant to Paragraph 3, or (iii) a permitted transferee pursuant to Paragraph 9.

(b) Disclosure. DURING THE TERM OF THIS AGREEMENT THERE SHALL BE NO SALE OR OTHER TRANSFER OF THE PROPERTY WITHOUT THE WRITTEN CERTIFICATION BY THE AGENCY THAT THE TRANSFEREE QUALIFIES AS AN ELIGIBLE HOUSEHOLD AND THAT THE PROPERTY IS BEING TRANSFERRED AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE, WHICH IS CAPPED AT THE AFFORDABLE UNIT COST AS DEFINED IN PARAGRAPH 1.a. ANY SALE OR OTHER TRANSFER OF THE PROPERTY IN VIOLATION OF THIS COVENANT SHALL BE VOID.

(c) Principal Residence Requirement. OWNER COVENANTS AND AGREES THAT HE/SHE/THEY SHALL OCCUPY THE PROPERTY AS HIS/HER/THEIR PRINCIPAL RESIDENCE FOR THE DURATION OF HIS/HER/THEIR OWNERSHIP AND SHALL NOT RENT OR LEASE THE PROPERTY OR PORTION

THEREOF DURING THE TERM OF THIS AGREEMENT. Without limiting the generality of the foregoing, any absence from the Property by Owner for a period of ninety (90) or more days shall be deemed an abandonment of the Property as the principal residence of Owner in violation of the conditions of this Paragraph. Upon request by the Agency made from time to time, the Owner of the Property shall submit an affidavit to the Agency certifying that the Property is the Owner's principal residence and provide such documents and other evidence as may be requested to verify Owner's compliance with this requirement. Abandonment of the Property shall constitute an Option Event (as defined in Paragraph 3.c below) and shall entitle the Agency to exercise its Option to purchase the Property.

3. Option to Purchase.

(a) **Grant of Option to Purchase.** Owner hereby grants to the Agency an option ("Option") to purchase all of Owner's right, title and interest in and to the Property upon the occurrence of an Option Event (defined in Paragraph 3.c below), subject to the terms and conditions contained herein.

(b) **Assignment of the Option.** The Agency may assign the Option to another government entity, a non-profit affordable housing provider or a person or family that qualifies as an Eligible Household. The Agency's assignment of the Option shall not extend any time limits contained herein with respect to the exercise period of the Option or the period within which the Property must be purchased.

(c) **Events Giving Rise to Right to Exercise Option.** The Agency shall have the right to exercise its Option upon the occurrence of any of the following events (each, an "Option Event"):

(i) Receipt of a Notice of Intent to Transfer (defined in Paragraph 3.d.i below);

(ii) Any actual, attempted or pending sale, conveyance, transfer, lease or other attempted disposition of the Property or of any estate or interest therein, except as provided in Paragraph 10 below;

(iii) Any actual, attempted or pending encumbrance of the Property, including without limitation by way of mortgage or deed of trust, or by judgment, mechanics, tax or other lien, except as provided in Paragraph 9 below;

(iv) Recordation of a notice of default and/or notice of sale pursuant to California Civil Code section 2924 (or successor provisions) under any deed of trust or mortgage with a power of sale encumbering the Property;

(v) Commencement of a judicial foreclosure proceeding regarding the Property;

(vi) Execution by Owner of any deed in lieu of foreclosure transferring ownership of the Property;

(vii) Commencement of a proceeding or action in bankruptcy, whether voluntary or involuntary, pursuant to Title 11 of the United States Code or other bankruptcy statute, or any other insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship, concerning the Owner; or

(viii) Any violation by Owner of any provision of this Agreement including, without limitation, the conditions set forth in Paragraph 2 above.

(d) Method of Exercising the Option.

(i) **Notice of Intent to Transfer.** If Owner desires to sell, convey, transfer (other than pursuant to Paragraph 9), lease, encumber (other than pursuant to Paragraph 10) or otherwise dispose of the Property or of any estate or interest therein, no less than 60 days prior to the date of such proposed sale, conveyance, transfer, lease, encumbrance or disposition, Owner shall notify Agency in writing to that effect (the "Notice of Intent to Transfer"). The Notice of Intent to Transfer shall be in substantially the form attached hereto as Exhibit B. In the case of a proposed sale of the Property to an identified prospective purchaser, the Owner shall submit to the Agency, together with the Notice of Intent to Transfer, a copy of the prospective purchaser's income certification, a list of all assets owned by the prospective purchaser, and other financial information reasonably requested by Agency, in a form approved by the Agency, along with the income certification to be provided to any lender making a loan to the prospective purchaser. The Agency may require documentation evidencing and supporting the income and other financial information contained in the certifications.

(ii) **Notice of Exercise.** Upon the occurrence of any Option Event, the Agency may exercise its Option by delivering notice, pursuant to Paragraph 16 and within the time period specified in Paragraph 3(d)(iv), to Owner of Agency's intent to exercise such Option pursuant to the terms of this Agreement ("Notice of Exercise"). The Notice of Exercise may be in the form attached hereto and incorporated herein as Exhibit C, or in such other form as the Agency may from time to time adopt. If the Option Event relates to the potential foreclosure of a mortgage under Paragraphs 3.c.iv, 3.c.v, or 3.c.vi, then the Agency shall also deliver the Notice of Exercise to the mortgagee or beneficiary under such mortgage, at such mortgagee's or beneficiary's address of record in the Office of the Recorder of Santa Clara County.

(iii) **Notice of Consent to Transfer.** If the Agency does not exercise the Option, it may give its consent to the occurrence of the Option Event ("Consent to Transfer"). If the Option Event involves a proposed sale of the Property to a prospective purchaser, the Agency's consent shall be conditioned upon (i) the proposed purchaser's qualification as an Eligible Household; (ii) the sale of the Property at a price not to exceed the Adjusted Resale Price; (iii) the proposed purchaser's execution of a Disclosure Statement in the form attached hereto as Exhibit F or such other form or forms as may be promulgated by the Agency; and (iv) the proposed purchaser's assumption of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or execution of an agreement substantially similar to this Agreement, within sixty (60) days after the Consent to Transfer has been delivered to Owner and recordation of such assumption agreement or substitute agreement. If the prospective purchaser (i) fails to qualify as an Eligible

Household, (ii) fails to execute and deliver the Disclosure Statement to the Agency, or (iii) fails to execute and deliver to the Agency an assumption agreement or an agreement substantially similar to this Agreement within such sixty (60) day period, then the Consent to Transfer shall expire and the Agency may, at its option, either notify Owner of the disqualification, thereby entitling Owner to locate another purchaser who qualifies as Eligible Household, or exercise the Option, as if no Consent to Transfer had been delivered.

(iv) **Time Period for Notice.** The Agency shall deliver a Consent to Transfer, if applicable, not later than sixty (60) days after the date that it receives notification of an Option Event. The Agency shall deliver a Notice of Exercise, if applicable, on or before the date which is the later to occur of the following: (i) sixty (60) days after the date that the Agency receives notification of an Option Event or (ii) thirty (30) days after a Consent to Transfer has expired. For purposes of computing commencement of the delivery periods, the Agency shall be deemed to have received notification of an Option Event on the date of delivery of a Notice of Intent to Transfer, pursuant to the terms of Paragraph 16 below or on the date it actually receives notice of default, summons and complaint or other pleading, or other writing specifically stating that an Option Event has occurred. The Agency shall have no obligation to deliver a Notice of Exercise or Consent to Transfer, and the applicable time period for exercise of the Option shall not commence to run, unless and until the Agency has received notification of an Option Event in the manner specified in this subparagraph. If there is a stay or injunction imposed by court order precluding the Agency from delivering its Consent to Transfer or Notice of Exercise within the applicable time period, then the running of such period shall cease until such time as the stay is lifted or the injunction is dissolved and the Agency has been given written notice thereof, at which time the period for delivery of a Consent to Transfer or Notice of Exercise shall again begin to run.

(v) **Notice of Abandonment.** If the Agency fails to deliver a Notice of Exercise or Consent to Transfer within the time periods set forth in paragraph 3.d.iv, upon request by Owner, the Agency shall cause to be filed for recordation in the Office of the Recorder of Santa Clara County, a notice of abandonment, which shall declare that the provisions of the Option are no longer applicable to the Property. Unless Owner requests recordation of notice of abandonment within 30 days of the Agency's failure to deliver Notice of Exercise or Consent to Transfer, the Agency shall have no obligation to record the notice of abandonment. Upon recordation of a notice of abandonment, the Option shall terminate and have no further force and effect. If the Agency fails to record a notice of abandonment, the sole remedy of Owner shall be to obtain a judicial order instructing prompt recordation of such a notice.

(vi) **Right to Reinstatement.** If the Option Event is the recordation of a notice of default, then the Agency shall be deemed to be Owner's successor in interest under California Civil Code Section 2924c (or successor section) solely for purposes of reinstatement of any mortgage on the Property that has led to the recordation of the notice of default. As Owner's deemed successor in interest, the Agency shall be entitled to pay all amounts of principal, interest, taxes, assessments, homeowners' association fees, insurance premiums, advances, costs, attorneys' fees and expenses required to cure the default. If the Agency exercises the Option, then any and all amounts paid by the Agency pursuant to this

Paragraph shall be treated as Adjustments to the Base Resale Price for the Property, as defined in Paragraph 5 below.

(vii) **Inspection of Property.** After receiving a Notice of Intent to transfer or delivering a Notice of Exercise, the Agency shall be entitled to inspect the Property one or more times prior to the close of escrow to determine the amount of any Adjustments to the Base Resale Price. Before inspecting the Property, the Agency shall give Owner not less than forty-eight (48) hours' written notice of the date, time and expected duration of the inspection. The inspection shall be conducted between the hours of 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding court holidays, unless the parties mutually agree in writing to another date and time. Owner shall make the Property available for inspection on the date and at the time specified in the Agency's request for inspection.

(viii) **Escrow.** Promptly after delivering a Notice of Exercise, the Agency shall open an escrow account for its purchase of the Property. Close of escrow shall take place on the date that is the later to occur of the following, (a) ninety (90) days after a Notice of Exercise has been delivered, or (b) ten (10) days after Owner has performed all acts and executed all documents required for close of escrow. Prior to the close of escrow, the Agency shall deposit into escrow with a title company of Agency's choosing, an amount equal to the Adjusted Resale Price as defined in Paragraph 5 below and all escrow fees and closing costs to be paid by Agency. Commissions (not to exceed 6% of the actual sales price), closing costs and title insurance shall be paid pursuant to the custom and practice in the County of Santa Clara at the time of the opening of escrow, or as may otherwise be provided by mutual agreement. Owner agrees to perform all acts and execute all documents reasonably necessary to effectuate the close of escrow and transfer of the Property to the Agency.

(ix) **Proceeds of Escrow; Removal of Exceptions to Title.** Prior to close of escrow, Owner shall cause the removal of all exceptions to title to the Property that were recorded after the Effective Date with the exception of (i) taxes for the fiscal year in which the escrow for this transaction closes, which taxes shall be prorated as between Owner and Agency as of the date of close of escrow; (ii) quasi-public utility, public alley, public street easements, and rights of way of record, and (iii) such other liens, encumbrances, reservations and restrictions as may be approved in writing by Agency ("Permitted Exceptions").

The purchase price deposited into escrow by the Agency shall be applied first to the payment of any and all Permitted Encumbrances (as defined in Paragraph 10) recorded against the Property in order of lien priority, and thereafter to the payment of Owner's share of escrow fees and closing costs. Any amounts remaining after the purchase price has been so applied, if any, shall be paid to Owner upon the close of escrow. If the purchase price is insufficient to satisfy all liens and encumbrances recorded against the Property, the Owner shall deposit into escrow such additional sums as may be required to remove said liens and encumbrances. In the event that the Agency agrees to proceed with close of escrow prior to the date that Owner has caused all exceptions to title recorded after the Effective Date other than Permitted Exceptions to be removed, then Owner shall indemnify, defend and hold Agency harmless from any and all costs expenses or liabilities (including attorneys' fees) incurred or suffered by Agency that relate to such exceptions and their removal as exceptions to title to the Property.

4. **Base Resale Price.** Prior to adjustment pursuant to Paragraph 5 the base resale price ("Base Resale Price") of the Property shall be the lowest of:

(a) **Median Income.** The original price ("Base Price") paid by Owner for acquisition of the Property pursuant to the Program, increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the median household income ("Median Income") for Santa Clara County published by the California Department of Housing and Community Development, Division of Housing Policy Development, between the Effective Date and the date that the Agency receives notification of an Option Event; or

(b) **Index Price.** The Base Price increased (but not decreased) by an amount, if any, equal to the Base Price multiplied by the percentage increase in the Consumer Price Index for All Urban Consumers for the San Francisco-Oakland-San Jose published by the U.S. Department of Labor, Bureau of Labor Statistics ("Index") between the Recording Date and the date that the City receives notification of an Option Event; or

(c) **Fair Market Value.** The fair market value of the Property as determined by an appraiser selected and paid for by Owner and approved in writing by the Agency.

To compute the Base Resale Price, the Agency may use the Base Resale Price Worksheet attached as Exhibit D hereto, or such other form as the Agency may from time to time adopt.

5. **Adjustments to Base Resale Price.** Subject to the Affordable Unit Cost restriction described in subparagraph (d) below, the Base Resale Price shall be increased or decreased, as applicable, by the following adjustment factors ("Adjustment"):

(a) **Capital Improvements.** An increase for capital improvements made to the Property, but only if the amount of such improvements has been previously approved in writing by the Agency after Owner has submitted original written documentation of the cost to the Agency for verification. The amount of the Adjustment shall equal the original cost of any such capital improvements.

(b) **Damages.** A decrease by the amount necessary to repair damage to the Property, if any, and to place the Property into saleable condition as reasonably determined by the Agency upon Agency's exercise of its Option hereunder, including, without limitation, amounts attributed to cleaning; painting; replacing worn carpeting and draperies; making necessary structural, mechanical, electrical and plumbing repairs; and repairing or replacing built-in appliances and fixtures. Owner hereby covenants to, at Owner's expense, maintain the Property in the same condition as in existence on the date of Agency's Notice of Exercise, reasonable wear and tear excepted.

(c) **Advances by the Agency.** A decrease in an amount equal to the sum of all costs advanced by the Agency for the payment of mortgages, taxes, assessments, insurance premiums, homeowner's association fees and/or associated late fees, costs, penalties, interest, attorneys' fees, pest inspections, resale inspections and other expenses related to the Property, which Owner has failed to pay or has permitted to become delinquent.

(d) **Adjusted Resale Price Not to Exceed Affordable Unit Cost.** The Base Resale Price as adjusted, is hereinafter referred to as the "Adjusted Resale Price." Notwithstanding any other provision hereof to the contrary, in no event shall the Adjusted Resale Price exceed the Affordable Unit Cost.

6. Priority and Effectiveness of the Option.

(a) **Recordation.** This Agreement shall be recorded in the Office of the Recorder of the County of Santa Clara on or as soon as practicable after the Effective Date. The Option shall have priority over any subsequent sale, conveyance, transfer, lease or other disposition or encumbrance of the Property, or of any estate or interest therein, and in the event of exercise of the Option by Agency, the Agency shall take the Property subject only to Permitted Exceptions. Except as otherwise provided in Paragraph 7.a, the exercise of the Option by the Agency at any time and from time to time shall not extinguish the Option or cause a merger of the Option into any estate or other interest in the Property, and the Option shall continue to exist and be effective with respect to the Property against any and all subsequent owners in accordance with the terms and conditions hereof.

(b) **Request for Notice of Default.** The Agency shall file a Request for Notice of Default for recordation in the Office of the Recorder of the County of Santa Clara promptly upon execution of this Agreement (see Exhibit E).

7. Survival of Option Upon Transfer.

(a) **In General.** The Agency's right to exercise the Option shall survive any transfer of the Property by Owner. Each transferee, assignee or purchaser of the Property during the term hereof shall be required to execute an agreement substantially in the form of this Agreement, provided that the term of any such agreement shall be for the duration of the term hereof as of the date of any such transfer, assignment or sale. The Option may be exercised against the Property throughout the term hereof, regardless of whether the Property is owned, possessed or occupied by Owner or any successor, transferee, assignee, heir, executor, or administrator of Owner, regardless of household income (if applicable) including a debtor-in-possession, debtor or trustee pursuant to Title 11 of the United States Code. Notwithstanding the foregoing, the Option shall not survive (i) the sale and transfer of the Property to a third party purchaser pursuant to a judicial or non-judicial foreclosure or a deed-in-lieu of foreclosure under a power of sale contained in a mortgage or deed of trust held by an institutional lender, provided that the Agency has received timely notice of such Option Event and has failed to either reinstate said mortgage or deed of trust or exercise its Option, or (ii) the recording of an instrument conveying Owner's interest in the Property to the Agency, or its assignee, provided the conveyance is in accordance with the terms of this Agreement.

(b) **HUD Insured Mortgage.** If Owner has acquired the Property by a mortgage insured by the Secretary of the United States Department of Housing and Urban Development, and a notice of default has been recorded pursuant to California Civil Code Section 2924 (or successor provisions), then this Option shall automatically terminate if title to the Property is transferred by foreclosure or deed-in-lieu of foreclosure, or if the insured mortgage is assigned to the Secretary.

8. **Voidable Transfers.** As long as the Option has not been abandoned pursuant to Paragraph 3.d.v, any actual or attempted sale, conveyance, transfer or other disposition of the Property, or of any estate or interest therein, in violation of the terms and conditions of this Agreement, shall be voidable at the election of the Agency.

9. **Permitted Transfers.** Provided that the transferee assumes, within 30 days of a written request by the Agency, all of Owner's duties and obligations under this Agreement pursuant to a written assumption agreement in a form acceptable to Agency, or at Agency's election, execution of an agreement substantially similar to this Agreement, the following transfers ("Permitted Transfers") of title to the Property, or of any estate or interest therein, shall not be subject to the Agency's prior approval, shall not trigger the exercise of the Option, and shall not be considered Option Events: (a) a good-faith transfer by gift, devise or inheritance to Owner's spouse or issue; (b) a taking of title by a surviving joint tenant; (c) a court-ordered transfer of title to a spouse as part of a divorce or dissolution proceeding; (d) a transfer by Owner into an inter vivos trust in which the Owner is a beneficiary and the Owner continues to occupy the property as his/her primary residence; (e) an acquisition of title, or of any interest therein, in conjunction with marriage; or (f) any good faith transfer to an Eligible Household. Notwithstanding any Permitted Transfer, the Option shall remain effective with respect to the Property for the duration of the term hereof.

10. **Rights of First Lender.** Notwithstanding any other provision of this Agreement, this Agreement shall not diminish the right of the holder of a a note evidencing any first priority loan on the Property ("First Lender") made for the purpose of securing financing to purchase the Property, to refinance indebtedness incurred to purchase the Property, or to make necessary repairs to the Property, (subject to the "Permitted Encumbrance Amount" specified above (collectively, "First Loan")). The provisions of this Agreement shall be subordinate to the lien of the First Lender's Deed of Trust and shall not impair the rights of the First Lender, or such lender's assignee or successor-in-interest to exercise its remedies under the First Lender's Deed of Trust in the event of a default under the First Lender's Loan or Deed of Trust. Such remedies under the First Lender's Deed of Trust include the right of foreclosure under a First Lender's Loan or a First Lender's acceptance of a deed-in-lieu of foreclosure, this Agreement shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter, provided that (i) Agency shall have been given written notice of the default under such Lender's First Deed of Trust, and (ii) the Agency shall not have cured the default under such Lender's First Deed of Trust within a thirty (30) day period or such longer period as may be provided in such notice, or commenced to cure the default within such thirty (30) day or longer period and given its firm commitment to complete the cure in form and substance acceptable to the First Lender. As used herein, the "Permitted Encumbrance Amount" shall not exceed an amount equal to ninety percent (90%) of the Base Resale Price calculated as provided in Paragraph 4. The Permitted Encumbrance Amount shall be calculated as if the Agency had received notification of an Option Event on the earlier of (a) the date on which First Lender's Deed of Trust is filed for record in the Office of the Recorder of the County of Santa Clara, or (b) the date the Agency receives a Notice of Intent to Transfer pursuant to paragraph 3.d.i above. Owner hereby covenants and agrees that he/she/they shall use his/her/their best efforts to ensure that any deed of trust or other agreement encumbering the Property shall include provisions providing for notice to be delivered to the Agency of any default thereunder and for Agency's right to cure such default at Agency's election.

11. **Obligation of Owner After Option Abandonment.** If the Agency records a notice of abandonment of the Option, then the Property may be sold by Owner to a third party without restriction as to price; however, upon such sale, Owner shall pay to Agency an amount ("Agency's Share") equal to eighty-five percent (85%) of the difference between (a) the actual sales price net of reasonable and customary real estate commissions paid (such commissions not to exceed six percent (6%) of the actual sales price), and (b) the Adjusted Resale Price. The Agency's Share shall be paid to the Agency concurrently with close of escrow on the sale of the Property, or upon receipt by Owner of the sale price for the Property, whichever shall first occur.

12. **Limits on Liability.** In no event shall the Agency become liable or obligated in any manner to Owner by reason of the assignment of this Agreement or the Option, nor shall Agency be in any way liable or obligated to Owner for any failure of the Agency's assignee to consummate a purchase of the Property or to comply with the terms of this Agreement or the Option, or any escrow instructions or agreement for the purchase of the Property.

13. **Insurance Proceeds and Condemnation Award.** In the event the Property is destroyed and insurance proceeds are distributed to Owner instead of being used to rebuild the Property, or, in the event of condemnation, if the proceeds thereof are distributed to Owner, any surplus of proceeds remaining after payment of the senior liens and encumbrances on the Property shall be distributed as follows: that portion of the surplus up to, but not to exceed, the net amount Owner would have received pursuant to Paragraph 3.d.ix had the Agency exercised its Option on the date of the destruction of condemnation valuation date shall be distributed to Owner, and the balance of such surplus, if any, shall be distributed to the Agency.

14. **Effective Date.** The rights and obligations of the Agency and Owner set forth in this Agreement shall be effective as of the Effective Date.

15. **Term of Agreement and Option.** The restrictions contained herein and the Agency's option to purchase the Property shall continue for a period of forty-five (45) years commencing on the Effective Date.

16. **Notices.** Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other Party in accordance with this Section. All such notices shall be sent by:

(a) personal delivery, in which case notice shall be deemed delivered upon receipt;

(b) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered two (2) business days after deposit, postage prepaid in the United States mail;

(c) nationally recognized overnight courier, in which case notice shall be deemed delivered one (1) day after deposit with such courier; or

(d) facsimile transmission, in which case notice shall be deemed delivered on transmittal, provided that a transmission report is generated reflecting the accurate transmission thereof.

Agency: Milpitas Redevelopment Agency
455 Calaveras Boulevard
Milpitas, CA 95035
Attn: Executive Director

Owner: At the address of the Property

17. Remedies Upon Breach.

(a) **Specific Performance.** Owner acknowledges that any breach in the performance of its obligations under this Agreement shall cause irreparable harm to the Agency. Owner agrees that the Agency is entitled to equitable relief in the form of specific performance upon its exercise of the Option, and that an award of damages shall not be adequate to compensate the Agency for Owner's failure to perform according to the terms of this Agreement.

(b) **Other Remedies.** Agency shall have all of the remedies provided for at law or equity.

18. General Provisions.

(a) **Attorneys' Fees.** If either party initiates legal proceedings to interpret or enforce its rights under this Agreement, the prevailing party in such action shall be entitled to an award of reasonable attorneys' fees and costs in additions to any other recovery to which it is entitled under this Agreement.

(b) **No Joint Venture; No Third-Party Beneficiary.** No joint venture or other partnership exists or is created between the Parties by virtue of this Agreement. Except as expressly stated herein, this Agreement does not benefit any third party.

(c) **Successors; Assignment.** This Agreement shall inure to the benefit of and shall be binding upon the Parties to this Agreement and their respective heirs, executors, administrators, successors and assigns. Agency shall have the right to assign all of its rights and obligations under this Agreement without the consent of Owner.

(d) **Entire Agreement; Amendment.** This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes any and all other prior negotiations, correspondence, understandings and agreements with respect thereto. There are no representations, promises, agreements or other understandings between the Parties relating to the subject matter of this Agreement that are not expressed herein. This Agreement may be modified only by an instrument in writing executed by the Parties or their respective successors in interest.

(e) **Survival; No Merger.** All of the terms, provisions, representations, warranties and covenants of the Parties under this Agreement shall survive the close of escrow of any sale of the Property and shall not be merged in any deed transferring the Property.

(f) **Authority And Execution.** Each Party represents and warrants that it has full power and authority to enter into this Agreement and to undertake all of its obligations hereunder, that each person executing this Agreement on its behalf is duly and validly authorized to do so.

(g) **Severability.** The invalidity or unenforceability of any term or provision of this Agreement shall not impair or affect the remainder of this Agreement, and the remaining terms and provisions hereof shall not be invalidated but shall remain in full force and effect.

(h) **Waiver; Modification.** No waiver or modification of this Agreement or any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the Party to be charged therewith. No evidence or any waiver or modification shall be offered or received in evidence in any proceeding, arbitration, or litigation between the Parties arising out of or affecting this Agreement or the rights or obligations of any Party hereunder, unless such waiver or modification is in writing and duly executed as aforesaid. The provisions of this section may not be waived except as herein set forth. A waiver or breach of any covenant, condition or provision of this Agreement shall not be deemed a waiver of any other covenant, condition or provision hereof.

(i) **Construction.** The section headings and captions used in this Agreement are for convenience of reference only and shall not modify, define, limit or amplify any of the terms or provisions hereof. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

(j) **Governing Law.** This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California.


(k) **Time of the Essence.** Time is of the essence in this Agreement as to each provision in which time is an element of performance.

(l) **Further Assurances.** Each Party will, upon reasonable request of the other Party, execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered, such further instruments and documents as may be reasonably necessary in order to fulfill the intents and purposes of this Agreement.

(m) **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed
as of the date first written above.

	<p>OWNER(S):</p> <hr/> <hr/> <hr/>
	<p>AGENCY:</p> <p>MILPITAS REDEVELOPMENT AGENCY</p> <hr/> <p>Executive Director</p>



On _____ before me, _____, a Notary Public in and for
said county and state, personally appeared _____
_____ personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies),
and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(Seal)

CERTIFICATE OF ACCEPTANCE

(Pursuant to Government Code §27281)

This is to certify that the interest in real property conveyed by the Resale Restriction and Option to Purchase Agreement dated _____ from _____ to the Milpitas Redevelopment Agency is hereby accepted by the undersigned office or agent on behalf of the Milpitas Redevelopment Agency pursuant to authority conferred by the Resolution No. _____ dated _____; and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____ By: _____

Its: _____

EXHIBIT A

Legal Description

[To be inserted]

To: Milpitas Redevelopment Agency
455 East Calaveras Boulevard
Milpitas, CA 95035

EXHIBIT C

FORM: NOTICE OF EXERCISE

Date: _____

To: _____
Owner or Transferee

Address

Re: Notice of Exercise

The Milpitas Redevelopment Agency ("Agency") hereby gives notice that it is exercising its option to purchase the real property located at _____, Milpitas, California. The option has been granted to the Agency pursuant to the Resale Restriction and Option to Purchase Agreement between Owner and the Agency dated _____ and recorded on _____ as Instrument No. _____. [The Agency has assigned its option to purchase the real property to _____.] An escrow for the purchase will be opened with the First American Title Company.

REDEVELOPMENT AGENCY

By: _____

Its: _____



)

)

EXHIBIT D

BASE RESALE PRICE WORKSHEET

Date: _____
Owner: _____
Address: _____
Purchase Price: _____
Date of Purchase: _____
Years Owned: _____ years

METHOD #1: CALCULATION BASED ON INCREASE IN MEDIAN INCOME***

Present Median Income: \$ _____ Family of four, County of Santa Clara (at time of sale of unit)	Effective Date: _____
---	-----------------------

Original Median Income: \$ _____ Family of four, County of Santa Clara (at time of purchase of unit)	Effective Date: _____
--	-----------------------

Amount of Increase: _____
Family of four, County of Santa Clara
(Present median income minus original median income)

Increase in Price: _____ x _____ x _____ = _____

Method #1 Resale Price: _____ + _____ = _____

METHOD #2: CALCULATION BASED ON INCREASE IN MEDIAN INCOME

Present CPI: _____	Effective Date: _____
--------------------	-----------------------

Original CPI: _____	Effective Date: _____
---------------------	-----------------------

Rate of Increase: _____ per annum

Increase in Price: _____ x _____ x _____ = _____

Method #2 Resale Price: _____ + _____ = _____

Based on the above, the base resale price as of this date, _____, is:

By: _____

Order No.
Escrow No.
Loan No.

WHEN RECORDED MAIL TO:

MILPITAS REDEVELOPMENT AGENCY
455 East Calaveras Boulevard
Milpitas, CA 95035
Attn: Agency Executive Director

(Space Above This Line For Recorder's Use Only)

REQUEST FOR NOTICE UNDER SECTION 2924b CIVIL CODE

In accordance with Section 2924b, Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as Instrument No. _____ on _____, _____, in the Official Records of Santa Clara County, California, and describing land therein as:

executed by _____, as Trustor, in which
_____ is named as Beneficiary, and
_____, as Trustee, be mailed to the Milpitas Redevelopment Agency,
455 Calaveras Boulevard, Milpitas, California _____, Attn: _____.

By: _____

NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED IN THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____ before me, _____, a Notary Public in and for said county and state, personally appeared _____ personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

(This area for official notarial seal)

EXHIBIT F

DISCLOSURE STATEMENT

THERE ARE RESTRICTIONS ON THE SALE OF THE PROPERTY YOU ARE BUYING. EXCEPT FOR A TRANSFER TO THE CITY FOLLOWING CITY'S EXERCISE OF ITS OPTION TO PURCHASE, THIS PROPERTY MAY ONLY BE SOLD TO AN "ELIGIBLE HOUSEHOLD" AT A PRICE NOT TO EXCEED THE ADJUSTED RESALE PRICE WHICH IS CAPPED AT AN "AFFORDABLE HOUSING COST."

THIS MEANS THAT YOU MAY NOT SELL THE PROPERTY FOR MARKET VALUE TO WHOMEVER YOU LIKE.

THESE RESTRICTIONS WILL BE IN EFFECT UNTIL _____.
ANY SALE OF THE PROPERTY IN VIOLATION OF THE RESTRICTIONS SHALL
BE VOIDABLE AT THE ELECTION OF THE CITY.

TO DETERMINE WHO AN ELIGIBLE HOUSEHOLD IS, AND WHAT THE ADJUSTED
RESALE PRICE AND AFFORDABLE HOUSING COST ARE, YOU SHOULD CONTACT
THE MILPITAS REDEVELOPMENT AGENCY.

YOU SHOULD ALSO READ THE RESALE RESTRICTION AND OPTION TO PURCHASE AGREEMENT RECORDED AGAINST THE PROPERTY. YOU MAY OBTAIN A COPY FROM THE MILPITAS REDEVELOPMENT AGENCY OR FROM THE ESCROW COMPANY.

I HAVE READ THE FOREGOING AND I UNDERSTAND WHAT IT MEANS.

BUYER

BUYER

SECURED BY DEED OF TRUST

transfer resulting from a decree of dissolution of marriage, legal separation agreement, or incidental property settlement agreement by which the spouse of a Borrower becomes a sole owner of the Property; and (g) a transfer into an inter vivos trust in which a Borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the Property.

1. **INTEREST.** Beginning on the recordation of the Deed of Trust and continuing until the Note is repaid in full, except as otherwise provided herein, the Principal Sum shall bear interest at the rate paid on the Lender's deposits to the Local Agency Investment Account on the date of this Promissory Note is executed plus one percent (1%) per annum. Beginning on the thirty-seventh month following recordation of the Deed of Trust and continuing until the Note is repaid in full, the Principal Sum shall not bear interest.

2. **INTEREST FORGIVEN.** Upon the fourth anniversary of the recordation of the Deed of Trust, the Lender shall forgive twenty percent (20%) of the interest accrued pursuant to Section 2. Upon each anniversary of the recordation of the Deed of Trust thereafter, Lender shall forgive an amount equal the amount of interest forgiven pursuant to the preceding sentence.

3. **DUE ON SALE.** This Promissory Note shall be due and payable in full upon the occurrence of any Sale.

4. **DUE ON RENTING OR LEASING.** This Promissory Note shall also be due and payable in full upon Renting or Leasing.

5. **AMOUNT AND TIME OF PAYMENT.** The Principal Sum and all accrued interest, if any, shall be due and payable on the date that is forty-five (45) years from the recordation of the Deed of Trust.

6. **PREPAYMENT.** Borrowers shall have the right at any time to prepay the Principal Amount of this Promissory Note. The Principal Amount of this Promissory Note shall be deemed paid in full when prepayments equal the Principal Sum, plus simple interest on the Principal sum from the date of this note to the date of payment at the rate set forth in Section 2.

7. **SECURITY.** This Promissory Note is secured by a Subordinate Deed of Trust of even date herewith.

8. **DEFAULT UNDER DEED OF TRUST.** If default occurs in any of the covenants or agreements contained in the Deed of Trust securing this Promissory Note, this Promissory Note shall immediately become due and payable in full at the option of Lender. Failure by Lender to exercise its option to accelerate in the event of a default shall not constitute waiver of the right to exercise such option in the event of the same or any other default. In the event Lender exercises such an option, the amount due and payable shall be as provided in Section 4 of this Note.

9. **REMEDIES.** Lender shall have available any such remedy provided by law or equity including foreclosure.

10. COSTS AND ATTORNEYS' FEES. If suit is brought to collect this Promissory Note, Lender shall be entitled to collect all reasonable costs and expenses of suit, including, but not limited to reasonable attorneys' fees.

11. SEVERABILITY. The covenants of this Promissory Note are severable. Invalidation of any covenant or any part thereof by law, judgment, or court order shall not affect the validity of any other covenant.

BORROWERS

Name

Name

Acknowledgement

Lender

))

EXHIBIT F
Subordinate Deed of Trust

RECORDING REQUESTED PURSUANT TO
GOVERNMENT CODE SECTION 27383

When Recorded Mail to:

Milpitas Redevelopment Agency
355 Calaveras Blvd
Milpitas, CA 95035
Attn: Executive Director

SUBORDINATE DEED OF TRUST

THIS DEED OF TRUST is made this _____ Day of _____ 2002, among the Trustor, _____ (herein "Borrower"), the City of Milpitas (herein "Trustee"), and the Beneficiary, Milpitas Redevelopment Agency, a public body, corporate and politic, organized and existing under the laws of the State of California, whose address is 355 Calaveras Boulevard, Milpitas, California 9503594804 (herein "Lender").

BORROWER, in consideration of the indebtedness herein recited and the trust herein created, irrevocably grants and conveys to Trustee, in trust, WITH POWER OF SALE, the following described property located in the County of Santa Clara, State of California:

[legal description]

which has the address of _____, Milpitas, CA 95035 (herein "Property Address");

TOGETHER with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances and rents (subject however to the rights and authorities given herein to Lender to collect and apply such rents), all of which shall be deemed to be and remain a part of the property (or the leasehold estate if this Deed of Trust is on a leasehold) are hereinafter referred to as the "Property";

TO SECURE to Lender the repayment of the indebtedness evidenced by a promissory note dated _____ and extensions and renewals thereof (herein "Note"), in the principal sum _____ (\$ _____), with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Deed of Trust; and the performance of the covenants and agreements of Borrower herein contained.

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to grant and convey the Property, and that the Property is unencumbered except for encumbrances of record. Borrower covenants that Borrower warrants and will defend generally the title to the Property against all claims and demands, subject encumbrances of record,

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest. Borrower shall promptly pay when due the principal and interest indebtedness evidenced by the Note and late charges as provided in the Note.

2. Application and Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and paragraph 1 hereof shall be applied by Lender first in payment of interest payable on the Note, and then to the principal of the Note.

3. Prior Mortgages and Deeds of Trust; Charges, Liens. Borrower shall perform all of Borrower's obligations under any mortgage, deed or trust, or other security agreement with a lien which has priority over this Deed of Trust, including Borrower's covenants to make payments when due. Borrower shall pay or cause to be paid all taxes, assessments and other charges, fines and impositions attributable to the property which may attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any.

4. Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards, included within the term "extended coverage", and such other hazards as Lender may require and in such amounts and for such periods as Lender may require.

The insurance carrier providing the insurance shall be chosen by Borrower subject to approval by Lender; provided, that such approval shall not be unreasonably withheld. All insurance policies and renewals thereof shall be in a form acceptable to Lender and shall include a standard mortgage clause in favor of and in a form acceptable to Lender. Lender shall have the right to hold policies and renewals thereof, subject to the terms of any mortgage, deed of trust or other security agreement with a lien which has priority over this Deed of Trust.

In the event of loss, Borrower shall give prompt notice the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance offers to settle a claim for insurance benefits, Lender is authorized to collect and apply insurance proceeds at Lender's option either to restoration and repair of the Property or to sums secured by this Deed of Trust.

5. Preservation and Maintenance of Property. Borrower shall keep the property in good repair and shall not commit waste or permit impairment or deterioration of the Property. If this Deed of Trust is on a planned unit development, Borrower shall perform all of Borrower's obligations under the declaration of covenants creating or governing the condominium or planned unit development, the by-laws and regulations of the condominium or planned unit development, and constituent documents.

6. Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, then Lender, at Lender's option, upon notice

to Borrower, may make such appearances, disburse such sums, including reasonable attorney's fees, and take such action as is necessary to protect Lender's interest, including reinstating any default under the senior loan by payment of the amount in default, excluding accelerated principal, but including reasonable costs and expenses and trustees' and attorneys' fees. If Lender required mortgage insurance is a condition of making the loan secured by this Deed of Trust, Borrower shall pay the premiums required to maintain such insurance in effect until such time as the requirement for such insurance terminates in accordance with Borrower's and Lender's written agreement or applicable law.

Any amounts disbursed by Lender pursuant to this paragraph 6, with interest thereon, at the Note rate, shall become additional indebtedness of Borrower secured by this Deed of Trust. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof. Nothing contained in this paragraph 6 shall require Lender to incur any expense or take any action hereunder.

7. Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefore related to Lender's interest in the Property.

8. Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender, subject to the terms of any mortgage, Deed of Trust or other security agreement with a lien which priority over this Deed of Trust.

9. Borrower Not Released; Forbearance by Lender Not a Waiver. Extension of time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower and Borrower's successor's in interest. Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy.

10. Successors and Assigns Bound; Joint and Several Liability; Co-signers. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions and paragraph 15 hereof. All covenants and agreements of Borrower shall be joint and several. Any Borrower who co-signs this Deed of Trust, but does not execute the Note, (a) is co-signing this Deed of Trust only to grant and convey that Borrower's interest in the Property of Trustee under the terms of this Deed of Trust, (b) is not personally liable on the Note or under this Deed of Trust, and (c) agrees that Lender and any other Borrower hereunder may agree to extend, modify, forbear, or make any other accommodations with regard to the terms of this Deed of Trust or note, without the Borrower's and without releasing that Borrower or modifying this Deed of Trust as to that Borrower's interest in the Property.

11. Notice. Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Deed of Trust shall be given by delivering it or by mailing such notice by certified mail addressed to Borrower at the Property Address or at such other address as Borrower may designate by notice to Lender as provided herein, and (b) any notice to Lender shall be given by certified mail to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Deed of Trust shall be deemed to have been given to borrower or Lender when given in the manner designated herein.

12. Governing Law; Severability. The state and local laws applicable to this Deed of Trust shall be the laws of the jurisdiction in which the Property is located. The foregoing sentence shall not limit the applicability of Federal law to this Deed of Trust. In the event that any provision or clause of this Deed of Trust or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of this Deed of Trust and the Note are declared to be severable. As used herein, "costs", "expenses" and "attorneys' fees" include all sums to the extent not prohibited by applicable law or limited herein.

13. Borrower's Copy. Borrower shall be furnished a conformed copy of the Note and of this Deed of Trust at the time of execution or after recordation hereof.

14. Mortgage Loan Agreement. Borrower shall fulfill all of Borrower's obligations under any home rehabilitation, improvement, repair, or other loan agreement which Borrower enters into with Lender. Lender, at Lender's option, may require Borrower to execute and deliver to Lender, in a form acceptable to Lender, an assignment of any rights, claims, or defenses which Borrower may have against parties who supply labor, materials or services in connection with improvements made to the Property.

15. Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person), Lender may, at its option, require immediate payment in full of all sums secured by this Deed of Trust. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Deed of Trust, or if Lender has executed a separate written waiver of this option.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than thirty (30) days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Deed of Trust. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Deed of Trust without further notice or demand on Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

16. Acceleration; Remedies. Except as provided in paragraph 15 hereof, upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, including the covenants to pay when due any sums secured by this Deed of Trust, Lender prior to

acceleration shall give notice to Borrower as provided in paragraph 11 hereof specifying: (1) the breach; (2) the action required to cure such breach; (3) a date, not less than ten (10) days from the date of notice is mailed to Borrower, by which such breach must be cured; and (4) that failure to cure such breach on or before the date specified in the notice may result in acceleration of the sums secured by this Deed of Trust and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to bring a court action to assert the nonexistence of a default or other defense of Borrower to acceleration and sale. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this paragraph 16, including but not limited to, reasonable attorney's fees.

If Lender invokes the power of sale, Lender shall execute or cause Trustee to execute a written notice of the occurrence of an event of default and of Lender election to cause the Property to be sold and shall cause such notice to be recorded in each county which the Property or some part thereof is located. Lender or Trustee shall mail copies of such notice in the manner prescribed by applicable law. Trustee shall have public notice of sale to the persons and in the manner prescribed by applicable law. After lapse of such time as may be required by applicable law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder at the time and place and under the terms designated in the notice of sale in one or more parcels and in such order as Trustee may determine. Trustee may postpone sale of all or any parcel of any previously scheduled sale. Lender or Lender's designee may purchase the Property at any sale.

Trustee shall deliver to the purchaser Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be prima facie evidence of the truth of the statements made herein. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including, but not limited to, reasonable Trustee's and attorneys' fees and costs of title evidence; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

17. Borrower's Right to Reinstate. Notwithstanding Lender's acceleration of the sums secured by this Deed of Trust due to Borrower's breach, Borrower shall have the right to have any proceedings begun by Lender to enforce this Deed of Trust discontinued at any time prior to five days before sale of the Property pursuant to the power of sale contained in this Deed of Trust or at any time prior to entry of a judgment enforcing this Deed of Trust if: (a) Borrower pays Lender all sums which would be then due under this Deed of Trust and the Note had no acceleration occurred; (b) Borrower cures all breaches of any other covenants or agreements of Borrower contained in this Deed of Trust; (c) Borrower pays all reasonable expenses incurred by Lender and Trustee in enforcing the covenants and agreements of Borrower contained in this Deed of Trust, and in enforcing Lender's and Trustee's remedies as provided herein, including but not limited to, reasonable attorney's fees; and (d) Borrower takes such action as Lender may reasonably require to assure that the lien of this Deed of Trust, Lender's interest in the Property and Borrower's obligation to pay the sums secured by this Deed of Trust shall continue unimpaired. Upon such payment and cure by Borrower, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as if no acceleration had occurred.

18. Assignment of Rents; Appointment of Receiver; Lender in Possession. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under paragraph 16 hereof or abandonment of the Property, have the right to collect and retain such rents as they become due and payable.

Upon acceleration under paragraph 16 hereof or abandonment of the Property, Lender, in person, by agent, or by judicially appointed receiver shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied first to premiums on receiver's bonds and reasonable attorney's fees, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

19. Subordination. Lender and Borrower acknowledge and agree that this Deed of Trust is subject and subordinate in all respects to the liens, terms, covenants, and conditions of the first deed of trust and to all advances heretofore made or which may hereafter be made pursuant to the first deed of trust including all sums advanced for the purpose of protecting or further securing the lien of the first deed of trust, or curing defaults by the Borrower under the first deed of trust.

Except as specifically set forth in this paragraph 19, Borrower may not subordinate this Deed of Trust to any other security instrument, promissory note, lien or other such similar document without first obtaining prior written approval of Lender. Additionally, Borrower agrees that the property subject to this Deed of Trust shall not be refinanced in order that Borrower may withdraw cash from the equity in the Property, unless such a refinance is for hardship reasons which shall be reviewed and approved in the sole and absolute discretion of the Lender.

20. Reconveyance. Upon payment of all sums secured by this Deed of Trust, Lender shall request Trustee to reconvey the Property and shall surrender this Deed of Trust and all notes evidencing indebtedness secured by this Deed of Trust to Trustee. Trustee shall reconvey the Property without warranty and without charge to the person or persons legally entitled thereto. Such person or persons shall pay costs of recordation, if any.

21. Substitute Trustee. Lender, at Lender's option, may from time to time appoint a successor trustee to any trustee appointed hereunder by an instrument executed and acknowledged by Lender and recorded in the office of the Recorder of the county where the Property is located. The instrument shall contain the name of the original Lender, Trustee and Borrower, the book and page where this Instrument is recorded and the name and address of the successor trustee. The successor trustee shall, without conveyance of the Property, succeed to all the title, powers and duties conferred upon the Trustee herein and by applicable law. This procedure for substitution of trustee shall govern to the exclusion of all other provisions for substitution.

22. Request for Notices. Borrower requests that copies of the notice of default and notice of sale be sent to Borrower's address which is the Property Address. Lender requests that copies of notices of foreclosure from the holder of any lien which has priority over this Deed of

Trust be sent to Lender's address, as set forth on page one of this Deed of Trust, as provided by Section 2924(b) of the Civil Code of California.

23. Statement of Obligation. Lender may collect a fee not to exceed \$50 for furnishing the statement of obligation as provided by Section 2943 of the Civil Code of California.

24. Residency. Borrower agrees that the Property subject to this Deed of Trust shall be owner-occupied by Borrower, and failure to do so occupy constitutes a default under the Deed of Trust and the Note.

IN WITNESS WHEREOF, Borrower has executed this Deed of Trust.

BORROWER

Name

Name

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT ("**Agreement**") dated for reference purposes this third day of June, 2003, is entered into by and between the COUNTY OF SANTA CLARA, a political subdivision of the State of California ("**County**") and the MILPITAS REDEVELOPMENT AGENCY, a public agency ("**Agency**"). County and Agency are hereinafter collectively referred to as the "**Parties**."

RECITALS

WHEREAS, by Resolution No. 192, adopted in 1976, the Agency established the Milpitas Redevelopment Project Area No. 1 ("**Project Area**") located within the City of Milpitas, California ("**City**"), and adopted a redevelopment plan for the Project Area ("**Redevelopment Plan**");

WHEREAS, during the period from 1979 through 1996, the Agency adopted seven amendments to the Redevelopment Plan which amendments added territory to the Project Area and increased the Agency's tax increment and bonded indebtedness limitations;

WHEREAS, the Agency has proposed a further amendment to the Redevelopment Plan ("**Plan Amendment**") in order to: (i) add territory to the Project Area, (ii) increase the limitation on tax increment revenue that may be allocated to the Agency, and (iii) increase the limitation on incurrence of Agency bonded indebtedness.

WHEREAS, following adoption of the Plan Amendment, the Agency intends to issue tax allocation bonds secured by property taxes generated within the Project Area and allocated to the Agency ("**Tax Allocation Bonds**");

WHEREAS, the City and the County have proposed to enter into a Sales Tax Sharing Agreement ("**Sales Tax Sharing Agreement**") pursuant to which the City shall agree to pay to the County certain sales tax revenues under the conditions specified in such agreement;

WHEREAS, the County owns certain real property located in the amended Project Area and more particularly described in Exhibit A attached hereto and incorporated herein (the "**Property**") and has enacted County of Santa Clara Ordinance Code Section A21-2 providing for the disposition of the Property for residential, commercial or other approved purposes;

WHEREAS, the County desires to sell to Agency, and Agency desires to purchase from County, the Property, pursuant to the terms and conditions set forth herein; and

WHEREAS, the acquisition of the Property pursuant to the terms hereof will be of benefit to the residents of the Project Area and the City and is consistent with, and shall facilitate the implementation of the Redevelopment Plan.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Purchase. County shall sell to Agency, and Agency shall purchase from County, the Property in accordance with the terms, covenants and conditions set forth herein.

2. Purchase Price. The purchase price for the Property ("**Purchase Price**") shall be the sum of the following: (i) One Hundred Thirty Five Million Dollars (\$135,000,000) payable in installments over a 20-year period as described below (the "**Installment Payments**"); (ii) the aggregate sum of the "**Developer Negotiated Value**" (as defined below) for all parcels comprising the Property; and (iii) the additional payments described in Section 3.3 ("**Additional Payments**").

3. Payment of Purchase Price. The Purchase Price shall be payable as follows.

3.1 Developer Negotiated Value. On the Closing Date (as defined in Section 11) Agency shall remit to County the Developer Negotiated Value for the Property; provided however, if any agreement relating to the sale of any portion of the Property to a third party fails to be consummated on the Closing Date, the Agency shall purchase such property from County for a sale price equal to the Developer Negotiated Value in accordance with the payment schedule described in Exhibit G attached hereto.

"**Developer Negotiated Value**" means the purchase price to be paid by a third party or parties ("**Purchaser**") to the Agency for the acquisition of the Property or any portion thereof as negotiated by and between County and such third party purchasers pursuant to the Disposition Agreement (as defined in Section 15.1); provided however, if any such purchase fails to be consummated on the Closing Date for whatever reason, or if County fails to execute a binding agreement with a third-party for disposition of the Property, the Developer Negotiated Value shall be the price specified in Exhibit G.

The Parties acknowledge and agree that (i) a portion of the Property, consisting of approximately 1.06 acres and more particularly described in Exhibit A-1 shall be retained by the Agency beyond the Closing Date; and (ii) Agency's payment for such parcel is included in the Purchase Price.

3.2 Installment Payments. In addition to the sum or sums payable pursuant to Section 3.1, the Agency shall pay to the County Installments Payments equal to the sum of \$135,000,000 in accordance with the following schedule:

(a) Not later than the earlier of: (i) April 30, 2004, or (ii) fifteen (15) days following the funding of the Tax Allocation Bonds, the Agency shall remit to the County the sum of Twenty Million Dollars (\$20,000,000).

(b) Reserved.

(c) As a portion of the \$135,000,000, as specified in Exhibit H attached hereto (and in the Exclusive Negotiating Agreement attached hereto as Exhibit I), in connection with the development of the Property, the Agency shall finance the construction or installation of off-site public improvements, provide a subsidy of one million dollars (\$1,000,000) in connection with the development of affordable housing on a portion of the Property, and pay certain other expenses in connection with the development of the Property in the maximum aggregate amount of \$20 million. The Agency shall receive credit toward the Installment Payments in an amount equal to the Agency's actual expenditures in connection with the foregoing up to a maximum of Twenty Million Dollars (\$20,000,000). If Agency's expenditures pursuant to this Section total less than \$20,000,000, Agency shall pay the balance to County on June 30, 2006 together with the payment due on such date pursuant to Section 3.2(d)(i). To carry out the foregoing, upon the later date of the (i) Closing Date or (ii) the earlier of April 30, 2004 or fifteen (15) days following the funding of the Tax Allocation Bonds, the Agency shall deposit the sum of \$20,000,000 in an escrow account for the foregoing purposes ("**Infrastructure Escrow**"). Interest earned on such account shall be payable to County. Upon creation of the Infrastructure Escrow, the Parties shall execute escrow instructions allowing County to withdraw funds from the Infrastructure Escrow by providing escrow holder and Agency advance written notice of a withdrawal. If Agency fails to object to a withdrawal within three (3) business days following notice from County, escrow holder shall release such requested funds to County. The \$20,000,000 shall be used only for the purposes set forth in Exhibit H attached hereto whether or not the Property is sold pursuant to the Exclusive Negotiating Agreement.

(d) The Agency shall pay to the County the sum of Ninety Five Million Dollars (\$95,000,000) (the balance of the \$135,000,000 remaining after application of the Agency payments made and credits earned pursuant to Section 3.2(a) and (c)) in accordance with the following schedule:

(i) No later than June 30 of each year beginning on June 30, 2004, the Agency shall pay to the County the sum of Four Million Dollars (\$4,000,000) per year for ten years.

(ii) No later than June 30 of each year beginning on June 30, 2014, the Agency shall pay to the County the sum of Five Million Dollars (\$5,000,000) per year for five years.

(iii) No later than June 30 of each year beginning on June 30, 2019, the Agency shall pay to the County the sum of Six Million Dollars (\$6,000,000) per year for five years.

3.3 Additional Payments. No later than June 30 of each year beginning on June 30, 2024, and continuing until the earliest of (i) June 30, 2038, (ii) the termination or expiration date for the Redevelopment Plan as stated in the Plan Amendment (if any such date is stated therein) or as such date is determined pursuant to California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.), (iii) the date upon which the limitation upon tax increment revenue that may be allocated to the Agency pursuant to the Redevelopment Plan as

amended by the Plan Amendment is reached, or (iv) the termination of the Redevelopment Plan by action of the Agency and/or City Council, the Agency shall annually pay to the County the sum that is equal to the greater of: (A) Two Million Dollars (\$2,000,000), or (B) the equivalent of one-half of the annual sales and use tax revenue the City receives pursuant to the Uniform Local Sales and Use Tax Ordinance of the City of Milpitas (Municipal Code Title IX, Chapter 1) which has been generated from (a) the Elmwood Commercial Property (as described in Exhibit B attached hereto), and (b) the territory added to the Project Area pursuant to the Plan Amendment (as described in Exhibit C attached hereto); provided however, the annual payment required pursuant to this Section 3.3 shall not exceed Five Million Dollars (\$5,000,000).

4. Sales Tax Sharing Agreement; No Acceleration. The Installment Payments and the Additional Payments shall be obligations of the Agency, payable from tax increment revenue allocated to the Agency, bond proceeds, or other funds available to the Agency for such purposes. If the Agency fails, for whatever reason, to pay to County the full amount of any Installment Payment or Additional Payment when due, not later than thirty (30) days following the due date for such Installment Payment or Additional Payment, the City shall transfer to the County sales tax revenue in the amount of such unpaid portion pursuant to a Sales Tax Sharing Agreement substantially in the form attached hereto as Exhibit D. The failure of the Agency to make any individual Installment Payment or Additional Payment when due shall not accelerate the schedule for payment of the remainder of such payments.

5. Effective Date. This Agreement shall be effective on the date when all of the following shall have occurred: (i) execution of this Agreement has been duly authorized by the governing board of the Agency and the Board of Supervisors of the County; (ii) the Sales Tax Sharing Agreement has been duly authorized and executed by the City and the County; (iii) the Plan Amendment has been duly adopted, is in full force and effect (i.e., 30 days have elapsed following the City Council's second reading of the ordinance adopting the Plan Amendment), and includes the provisions described in Section 15 hereof; (iv) there is no pending litigation challenging the adoption of the Plan Amendment that prevents the Agency from collecting property taxes within the amended Project Area or issuing tax allocation bonds as contemplated by this Agreement; and (v) the statute of limitations for challenges to the Plan Amendment has expired. Notwithstanding the foregoing, the rights, responsibilities and obligations of the Parties pursuant to Sections 7, 15.1, and 16 through 44 shall take effect immediately upon the date of full execution of this Agreement by the duly authorized representatives of the Parties.

6. Escrow; Escrow Instructions. No later than five (5) business days following the date that this Agreement is fully executed, the Parties shall open an escrow to consummate the purchase and sale of the Property pursuant to this Agreement at the office of Financial Title Company located at 20355 Stevens Creek Blvd., Cupertino, California ("**Title Company**" or "**Escrow Agent**") or such other title company as may be mutually agreed upon by the Parties. Upon the opening of escrow, the Parties shall deposit with the Escrow Agent an executed copy of this Agreement, which shall serve as the joint escrow instructions of Agency and County for this transaction, together with such additional instructions as may be executed by the Parties and delivered to the Escrow Agent.

7. Title Documents. Agency acknowledges receipt of a preliminary title report for the Property dated May 8, 2003, and issued by Financial Title Company ("**Preliminary Report**"). County represents and warrants that, to the best of County's knowledge, there are no matters of record with respect to the Property that are not listed in the Preliminary Report.

8. Reserved.

9. Conveyance of Title. At the close of escrow, County shall, subject to Section 7 above, convey title to the Property to Agency by execution and delivery of the Grant Deed(s) (in the form attached hereto as Exhibit F), free and clear of all recorded and unrecorded liens, encumbrances, restrictions, easements, and leases, except: (i) the provisions and effect of the Redevelopment Plan, (ii) liens for nondelinquent general and special taxes, assessments and/or bonds; and (iii) such other conditions, liens, encumbrances, restrictions, easements and exceptions identified in the Preliminary Title Report and set forth in Exhibit E attached hereto or approved in writing by Agency (all of the foregoing, are collectively hereinafter referred to as the "**Permitted Exceptions**").

10. Closing Documents.

(a) County. No later than three (3) business days prior to the Closing Date, County shall deposit into escrow all of the following:

(i) A Grant Deed or Grant Deed(s), substantially in the form attached hereto as Exhibit F, duly executed and acknowledged, subject only to exceptions approved pursuant to this Agreement, together with Certificate(s) of Acceptance in the form shown in Exhibit F, as required by California Government Code Section 27281;

(ii) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transactions contemplated hereby; and

(iii) Unless County elects to have the following charges credited toward Agency's payment of the Purchase Price, no later than one (1) business day prior to close of escrow, County shall deposit into escrow immediately available funds in the amount necessary to pay one-half (1/2) of all escrow fees, conveyance fees, transfer taxes and recording fees (if any).

(b) Agency.

(A) No later than three (3) business days prior to the Closing Date, Agency shall deposit into escrow all of the following:

(i) Duly executed and acknowledged Certificate(s) of Acceptance substantially in the form attached to Exhibit F; and

(ii) Such additional duly executed instruments and documents as the Escrow Agent may reasonably require to consummate the transactions contemplated hereby.

(B) No less than one (1) business day prior to the close of escrow, Agency shall deposit into escrow immediately available funds in the amount equal the cost of all title insurance and title report costs, and one-half of all escrow fees, conveyance fees, transfer taxes and recording fees (if any).

11. Close of Escrow. Unless Agency terminates its obligation to purchase the Property pursuant to the terms hereof, or this Agreement is terminated pursuant to the terms hereof or extended by mutual written consent of the Parties, escrow shall close no later than the date ("**Closing Date**") which is the earlier of: (a) eighteen (18) months following the date of approval of this Agreement by the governing body of the Agency or the County, whichever is later, or (b) the date established for close of escrow pursuant to an executed agreement for the purchase of the Property by a third-party purchaser or purchasers. The Escrow Agent shall close escrow by: (i) causing the Grant Deed(s) to be recorded in the official records of Santa Clara County, California; and (ii) delivering to Agency the original Grant Deed(s), together with *conformed copies thereof indicating recording information thereon.* Possession of the Property shall be delivered to Agency at the close of escrow. The Parties intend that on the Closing Date, the Property shall be transferred from County to Agency and simultaneously from Agency to third-party purchasers pursuant to the Disposition Agreement (as described in Section 15.1). If the due date for Agency's first payment to County pursuant to Section 3.2, occurs prior to the Closing Date, County shall deposit into escrow fully executed Grant Deed(s) as described in Section 10 prior to such due date.

12. Closing Costs. Each Party shall pay one-half (1/2) of all escrow fees (including the costs of preparing documents and instruments), recording fees, conveyance fees and transfer taxes (if any). The Agency shall pay the cost of all title policy fees.

13. Prorations. At the close of escrow, the Escrow Agent shall make the following prorations: (i) property taxes (if any are applicable to the Property) shall be prorated as of the close of escrow based upon the most recent tax bill available, including any property taxes which may be assessed after the close of escrow but which pertain to the period prior to the transfer of title to the Property to Agency, regardless of when or to whom notice thereof is delivered; and (ii) any bond or assessment that constitutes a lien on the Property at the close of escrow shall be assumed by Agency. In addition, rents payable under any land leases, and any utility and sewer service charges shall be prorated as of the close of escrow.

14. Agency's Conditions to Closing. The close of escrow and Agency's obligation to purchase the Property and make the payments provided for under Sections 3.1 and 3.2 (c) are conditioned upon: (i) subject to County's right to cure defaults pursuant to Section 26, the performance by County of each obligation to be performed by County under this Agreement within the applicable time period, or the waiver by Agency of such obligation; and (ii) subject to Section 20, County's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the close of escrow.

Should any condition to closing fail to occur, excepting any such conditions that have been waived by Agency, Agency shall have the right, exercisable by giving written notice to County, to cancel the escrow, terminate the Agency's obligation to purchase the Property pursuant to this Agreement, and recover any and all amounts paid by Agency to County pursuant to Sections 3.1 or 3.2 (c) or deposited with the Escrow Agent by or on behalf of Agency. The exercise of this right by Agency shall not constitute a waiver by Agency of any other rights Agency may have at law or in equity.

Notwithstanding anything to the contrary contained in this Section 14, subject to Section 15, if County sells the Property to a third party for a residential development project with density that is consistent with the Milpitas Midtown Specific Plan, County shall be entitled to receive payments pursuant to Section 3.2(c).

15. Agency's Conditions Precedent; Adoption of Plan Amendment . Notwithstanding anything to the contrary contained in this Agreement, Agency shall have no obligation to purchase the Property or to make any payment provided for hereunder prior to fulfillment of all of the following conditions or Agency's waiver thereof: (A) the adoption of an amendment to the Redevelopment Plan which accomplishes all of the following: (i) the addition to the Project Area of the territory described in Exhibit C; (ii) an increase in the limitation on tax increment revenue that may be allocated to the Agency from property within the Project Area to a maximum of \$2.4 billion dollars (\$2,400,000,000); and (iii) an increase in the limitation on incurrence of Agency bonded indebtedness to four hundred ninety eight million dollars (\$498,000,000), and (B) the fulfillment of all conditions described in Subsections (i), (iii), (iv) and (v) of Section 5.

15.1 Disposition Agreements. The Parties acknowledge that the County shall execute an agreement ("**Disposition Agreement**") pursuant to which (i) County shall agree to sell the Property or portions thereof to third party purchaser(s) in accordance with the terms of the Exclusive Negotiating Agreement attached hereto as Exhibit I, and (ii) effective as of the Closing Date, subject to Section 15, the County shall assign its rights under such Disposition Agreement to Agency, and Agency shall assume County's obligations thereunder. The Disposition Agreement shall include provisions requiring (i) compliance with the Redevelopment Plan, (ii) compliance with City building, planning and zoning requirements including without limitation the City's General Plan and the Midtown Specific Plan, as such may be amended; and (iii) compliance with Agency affordable housing requirements.

16. Due Diligence; AS-IS Purchase. Prior to 4:30 p.m. on June 2, , 2003 ("**Due Diligence Period Termination**") Agency shall have the right to perform due diligence regarding the investigation, assessment, and monitoring of the condition of the Property, and unless Agency elects to terminate this Agreement pursuant to the terms hereof, subject to Section 15, Agency will purchase the Property in its "AS IS" condition as such condition exists at the Due Diligence Period Termination, subject only to the representations and warranties of County described in Sections 7, 17 and 20.

Prior to the Due Diligence Period Termination, Agency shall have the right, exercisable by giving written notice to County, to cancel the escrow, terminate this Agreement, and recover any and all amounts paid by Agency to County or deposited with the Escrow Agent by or on

behalf of Agency. The exercise of this right by Agency shall not constitute a waiver by Agency of any other rights Agency may have at law or in equity. If Agency fails to deliver notice of its election to terminate the Agreement by the Due Diligence Period, Agency shall be deemed to have conclusively approved the condition of the Property and to have agreed to accept the Property on the Closing Date in its condition as of the Due Diligence Period Termination, subject to Sections 21, 23 and 24 below.

17. Studies, Reports and Investigations. County represents and warrants that to the best of County's knowledge, it has provided to Agency all information, studies, reports, investigations, contracts, leases, rental agreements and other obligations concerning or relating to the Property which are in County's possession or which are reasonably available to County, including without limitation surveys, studies, reports and investigations concerning the Property's physical, environmental or geological condition, habitability, or the presence or absence of Hazardous Materials in, on or under the Property and its compliance with Environmental Laws (as defined in Section 20). In addition to the foregoing, County shall arrange for a third party to provide Agency with a Natural Hazards Disclosure Statement for the Property.

County hereby represents and warrants that it has disclosed to Agency all material information in County's possession or reasonably available to County (other than publicly-available information not originated by County) regarding the condition of the Property, including without limitation, information regarding soils, environmental factors, Hazardous Materials (as defined in Section 20), archeological information relating to the Property, and information relating to the Property's conformity with all applicable laws and regulations. County shall have no obligation to disclose or provide any privileged or legally protected information to Agency.

18. Right of Entry. During the Due Diligence Period, Agency and Agency's agents and employees shall have the right, upon reasonable notice to County, to enter upon the Property for the purpose of inspecting, examining, surveying and reviewing the Property. Agency's inspection, examination, survey and review of the Property shall be at Agency's sole expense. Agency shall obtain County's advance consent in writing to any proposed physical testing of the Property by Agency or Agency's agents, which consent shall not be unreasonably conditioned, withheld or delayed. Agency shall repair, restore and return the Property to its original condition after such physical testing, at Agency's sole expense. Agency shall schedule any such physical tests during normal business hours unless otherwise approved by County. Agency agrees to indemnify County and hold County harmless from and against all liability, loss, cost, damage and expense (including, without limitation, reasonable attorney's fees and costs of litigation) resulting from entry upon the Property by Agency or its employees, consultants, contractors or agents, except to the extent that such liability, loss, cost, damage and expense arises as a result of the negligence or other wrongful conduct of County or its employees, consultants, contractors or agents. Prior to Agency's entry upon the Property, Agency shall provide County with a certificate of insurance meeting County's current insurance requirements.

19. County's Conditions to Closing. The close of escrow and County's obligation to sell the Property pursuant to this Agreement are conditioned upon: (i) fulfillment of the conditions described in Section 5 (pertaining to establishment of the Effective Date); (ii) subject to

Agency's right to cure defaults pursuant to Section 26, the performance by Agency of each obligation to be performed by Agency under this Agreement within the applicable time period, or waiver by County of such obligation; (iii) Agency's representations and warranties contained in this Agreement being true and correct as of the Effective Date and the close of escrow; and (iv) Agency's approval of the Disposition Agreements (as defined in Section 15.1) prior to the Effective Date.

20. County's Representations and Warranties. County represents and warrants to Agency that the following statements are true:

(a) Except for any Permitted Exceptions and any agreements that have been consented to in writing by Agency, there are no leases, licenses, contracts or other agreements relating to the Property which will be in force after the Closing Date.

(b) There is no pending (nor has County received any written notice of any threatened) action, litigation, condemnation or other proceeding against the Property or against County with respect to the Property.

(c) County has received no written notice from any governmental authority having jurisdiction over the Property to the effect that the Property is not in compliance with applicable laws and ordinances (including any laws concerning the use, generation, handling, disposal or storage of Hazardous Materials).

(d) County has not received any notice from any insurer of defects or conditions relating to the Property that must be corrected.

(e) To County's knowledge, except as set forth in the reports provided to Agency pursuant to Section 17, there has been no release of any material known to County to be a "Hazardous Material" (as defined below) at or upon the Property, in an amount which would, as of the date hereof, give rise to an "Environmental Compliance Cost". The term "Hazardous Material" shall mean asbestos, petroleum products, and any other hazardous waste or substance which has, as of the date hereof, been determined to be hazardous or a pollutant by the U.S. Environmental Protection Agency, the U.S. Department of Transportation, or any State or Federal instrumentality authorized to regulate substances in the environment which has jurisdiction over the Property (each being referred to herein as an "Environmental Agency") which substance causes the Property (or any part thereof) to be in material violation of any applicable environmental laws, and shall include, but not be limited to: (A) a "hazardous substance" pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 (14), section 311 of the Federal Water Pollution Control Act, 33 U.S.C. §1321; (B) a "hazardous waste" pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6903, 6921; (C) a toxic pollutant under Section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. §1317(a)(1); (D) a "hazardous air pollutant" under section 112 of the Clean Air Act, 42 U.S.C. §7412; (E) a "hazardous material" under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. App. §1802(4), as any of the foregoing may be amended from time to time prior to Closing; (F) a "hazardous material" pursuant to the California Health & Safety Code; or (F) toxic or hazardous pursuant to regulations promulgated under the aforementioned laws (all of the foregoing laws,

rules and regulations being collectively referred to herein as "Environmental Laws"); provided, however, that the term "Hazardous Material" shall not include (x) motor oil and gasoline contained in or discharged from vehicles not used primarily for the transport of motor oil or gasoline, or (y) material which are stored, used, held, or disposed of in compliance with all applicable Environmental Laws. The term "Environmental Compliance Cost" means any out-of-pocket cost, fee or expense reasonably incurred directly to satisfy any requirement imposed by an Environmental Agency to bring the Property into compliance with applicable Environmental Laws directly relating to the existence on the Property of any Hazardous Material. COUNTY'S LIABILITY FOR SUCH COSTS SHALL BE LIMITED TO ONE MILLION DOLLARS (\$1,000,000) AND A HAZARDOUS MATERIALS RELEASE WILL BE EXECUTED BY THE THIRD PARTY PURCHASER AT THE CLOSE OF ESCROW SUPPLANTING THIS REPRESENTATION AND WARRANTY.

County further represents and warrants that the persons who have executed this Agreement on behalf of County are authorized to do, that County has the legal right to enter into this Agreement and to perform all of its terms and conditions, and that this Agreement is enforceable against County in accordance with its terms.

County shall notify Agency of any facts that would cause any of the representations contained in this Agreement to be untrue as of the close of escrow. If Agency reasonably believes that a fact materially and adversely affects the Property, and County fails to correct such condition within a reasonable period following notice thereof, but in no event later than the Closing Date, Agency shall have the option to terminate this Agreement with respect to Agency's obligation to purchase the Property by delivering written notice thereof to County. In the event Agency elects to so terminate such obligation, all funds and documents deposited into escrow by or on behalf of Agency or paid by Agency to County pursuant to Sections 3.1 or 3.2 (c) shall be returned to Agency, and all rights and obligations pursuant to Agency's obligation to purchase the Property hereunder shall terminate; provided however, subject to Section 15, if County sells the Property to a third-party for a residential development project with density that is consistent with the Milpitas Midtown Specific Plan, County shall be entitled to receive payments pursuant to Section 3.2(c).

County shall indemnify, defend and hold harmless Agency from all loss, cost, liability, expense, damage or other injury, including without limitation, attorneys' fees and all other costs and expenses incurred by reason of, or in any manner resulting from the breach of any representation or warranty contained in this Section.

21. County's Covenants. County covenants that from the Effective Date and through the close of escrow, County: (i) shall not permit any liens, encumbrances, or easements to be placed on the Property which will survive the Closing Date, other than Permitted Exceptions; (ii) shall not enter into any agreement regarding the sale, rental, management, repair, improvement, or any other matter affecting the Property that would be binding on Agency or the Property after the close of escrow without the prior written consent of Agency; (iii) shall not permit any act of waste or act that would materially diminish the value of the Property for any reason, except that caused by ordinary wear and tear; and (iv) shall maintain the Property in its condition as of the Effective Date, ordinary wear and tear excepted, and shall manage the Property substantially in accordance with County's established practices.

22. Agency's Representations, Warranties and Covenants. Agency represents, warrants and covenants that this Agreement and all other documents delivered in connection herewith, prior to or at the close of escrow: (i) have been duly authorized, executed, and delivered by Agency; (ii) are binding obligations of Agency; and (iii) do not violate the provisions of any agreement to which Agency is a party. Agency further represents and warrants that the persons who have executed this Agreement on behalf of Agency have are duly authorized to do, that Agency has the legal right to enter into this Agreement and to perform all of its terms and conditions, and that Agreement is enforceable against Agency in accordance with its terms. Agency further represents, warrants and covenants that: (a) Agency will promptly and diligently undertake all actions necessary to expeditiously accomplish the items set forth in Sections 5(iii), (iv) and (v) above, (b) Agency has satisfied, or will satisfy itself as to the physical, environmental, legal and economic condition and all other aspects of the Property, and (c) there are no restrictions, such as geographic or programmatic, regarding County's use of the funds Agency shall pay to County pursuant to this Agreement, and Agency shall place no such restrictions on such payments.

Agency shall indemnify, defend and hold harmless County from all loss, cost, liability, expense, damage or other injury, including without limitation, attorneys' fees and all other costs and expenses incurred by reason of, or in any manner resulting from the breach of any representation or warranty contained in this Section.

23. Damage and Destruction. In the event of any damage or other loss to the Property, or any portion thereof, caused by fire, flood or other casualty prior to the close of escrow in an amount not exceeding Five Million Dollars (\$5,000,000), Agency shall not be entitled to terminate this Agreement, but shall be obligated to close the escrow and purchase the Property as provided in this Agreement, without abatement in the Purchase Price, provided that County shall: (i) assign and transfer to Agency all of County's rights under any insurance policy covering the damage or loss, and all claims for monies payable from County's insurer(s) in connection with the damage or loss, and (ii) pay to Agency at the close of escrow the amount of County's deductible under the insurance policy or policies covering the damage or loss. In the event of damage or destruction of the Property or any portion thereof prior to the close of escrow in an amount in excess of Five Million Dollars (\$5,000,000), Agency may elect either to terminate Agency's obligation to purchase the Property hereunder upon written notice to County, or to consummate the purchase of the Property, in which case County shall (i) assign and transfer to Agency all of County's rights under any insurance policy covering the damage or loss, and all claims for monies payable from County's insurer(s) in connection with the damage or loss, and (ii) pay to Agency at the close of escrow the amount of County's deductible under the insurance policy or policies covering the damage or loss. If Agency elects to terminate its obligation to purchase the Property, all funds paid by Agency to County pursuant to Sections 3.1 or 3.2 (c) and all documents deposited into escrow by or on behalf of Agency shall be returned to Agency, and all rights and obligations with respect to Agency's obligation to purchase the Property hereunder shall terminate; provided however, subject to Section 15, if County sells the Property to a third-party for a residential development project with density that is consistent with the Milpitas Midtown Specific Plan, County shall be entitled to receive payments pursuant to Section 3.2 (c).

24. Condemnation. If prior to Close of Escrow, greater than 15% of the Property is taken by eminent domain (or an action of eminent domain has been commenced against all or any portion of the Property) (excluding for purposes of this Section, the exercise of any eminent domain powers by the City or Agency), upon County's receipt of notice thereof County shall promptly notify Agency of such fact, and Agency shall have the option to terminate its obligation to purchase the Property upon notice to County given not later than ten (10) days after receipt of County's notice. If Agency elects to terminate such obligation, all funds paid by Agency to County pursuant to Sections 3.1 or 3.2 (c) and all documents deposited into escrow by or on behalf of Agency shall be returned to Agency, and all rights and obligations with respect to Agency's obligation to purchase the Property hereunder shall terminate; provided however, subject to Section 15, if County sells the Property to a third-party for a residential development project with density that is consistent with the Milpitas Midtown Specific Plan, County shall be entitled to receive payments pursuant to Section 3.2 (c).

If Agency does not exercise such option to terminate its obligation to purchase the Property, County shall assign to Agency at the close of escrow, and Agency shall be entitled to negotiate for, receive, and keep, all awards, and rights to receive future awards, for such taking by eminent domain, and the transaction contemplated by this Agreement shall be consummated pursuant to the terms hereof, without any reduction of the Purchase Price.

25. Agreement to Cooperate. In the event that state legislation impairs the Agency's ability to collect and utilize tax increment revenue for redevelopment purposes, the County and the Agency agree to negotiate in good faith to address the effect such legislation will have upon each entity. The remainder of the Agreement not affected by such change in law shall not be subject to such negotiations.

26. Default, Cure Period, Remedies.

26.1 A "default" hereunder is defined as: (a) a failure by a party to this Agreement to observe, comply with, or perform any of the terms, covenants or conditions (other than a monetary default) applicable to such party (the "Defaulting Party") and the Defaulting Party's failure to cure such default within ten (10) days after written notice thereof; provided however, that if the nature of the party's noncompliance is such that more than 10 days are reasonably required for cure, then the Defaulting Party shall not be deemed to be in default if it commences such cure within such 10-day period and thereafter diligently pursues such cure to completion (but in no event more than thirty (30) days following written notice); (b) any failure by a Party to pay any monetary amount as due and payable hereunder within three (3) business days following written notice thereof; or (c) the failure of any representation or warranty made by a Party to be true in all material respects when made.

26.2 The Parties shall have all remedies at law or equity for a default under this Agreement and all such remedies shall be cumulative and in addition to any other remedy provided in this Agreement or otherwise available at law or equity. Without limiting the foregoing, the Parties acknowledge and agree that, in the event of default by Agency following the Effective Date and Agency's failure to cure such default within any applicable cure period, and the Agency fails to purchase the Property pursuant to the terms of this Agreement, subject to Section 15, provided that County is not in default hereunder, County shall be entitled to all

payments and amounts set forth in Sections 3.2(a), 3.2(d) and 3.3 of this Agreement, and may at its option, sell the Property to a third-party, in which case, County shall also be entitled to receive payments pursuant to Section 3.2(c), provided that such third-party sale is for a residential development project with density that is consistent with the Milpitas Midtown Specific Plan.

26.3 Any amount due hereunder which is not paid within seven (7) days following the due date thereof shall bear interest at the Default Rate (as defined below), from the due date until the date such sum is paid, but the payment of such interest shall not excuse or cure any default by the Defaulting Party under this Agreement. In addition, Agency acknowledges that late payment by Agency to County of Installment Payments or Additional Payments will cause County to incur costs not contemplated by this Agreement, the exact amount of such costs being extremely difficult and impractical to fix. Agency acknowledges that County intends to make commitments to third parties based on the timely payment by Agency of the Installment Payments and Additional Payments. Therefore, if County does not receive any payment due to County pursuant to this Agreement within seven (7) days following the due date of such payment, Agency shall pay to County an additional sum of \$10,000 as a late charge. Acceptance of any late charge shall not constitute a waiver of Agency's default with respect to the overdue amount, nor prevent County from exercising any of the other rights and remedies available to County.

26.4 "**Default Rate**" shall mean interest calculated at an annual rate equal to three percent (3%) in excess of the rate of interest most recently announced by Bank of America, NT & SA (or its successor bank) at its San Francisco office as its "prime rate" but in no event more than the maximum rate of interest permitted by law. If The Bank of America or its successor no longer issues a "prime rate" the most comparable rate of the largest bank with its corporate headquarters in New York shall be used.

27. Notices. Except as otherwise specified in this Agreement, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

- (i) personal delivery, in which case notice is effective upon delivery;
- (ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;
- (iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;
- (iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, and (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be

considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

To County: County of Santa Clara
70 West Hedding Street, 11th Floor
San Jose, California 95110
Attn: County Executive
Tel: (408) 299-5105
Fax: (408) 293-5649

Copy to: County of Santa Clara
70 West Hedding Street, 9th Floor
San Jose, California 95110
Attn: County Counsel
Tel: (408) 299-5900
Fax: (408) 292-7240

To Agency: Thomas Wilson, Executive Director
Milpitas Redevelopment Agency
455 E. Calaveras Boulevard
Milpitas, CA 95035-5479
Tel: 408.586.3050
Fax: 408.586.3056

Copy to: Steven T. Mattas, City Attorney
Meyers, Nave, Riback, Silver & Wilson
555 12th Street, Suite 1500
Oakland, CA 94607
Tel: 510.808.2000
Fax: 510.444.1108

28. No Brokers. Each Party hereby represents and warrants to the other Party that it has retained no broker or other party to whom a commission or finder's fee is due with respect to the transactions contemplated hereby. Each Party shall defend, indemnify and hold the other Party harmless from and against all claims, expenses, costs, or arising in connection with a breach of this warranty and representation. The terms of this Section shall survive the expiration or earlier termination of this Agreement.

29. Attorneys' Fees; Dispute Resolution. If either Party fails to perform any of its obligations under this Agreement, or if any dispute arises between the Parties concerning the meaning or interpretation of any provision hereof, then the prevailing party in any proceeding in connection with such dispute shall be entitled to the costs and expenses it incurs on account

thereof and in enforcing or establishing its rights hereunder, including, without limitation, court costs and reasonable attorneys' fees and expenses. If any dispute arises as to the construction or meaning of any provision in this Agreement or the Tax Sharing Agreement (in the event it affects the rights or obligations of the Parties), either Party shall call a special meeting of the Parties by written request specifying the nature of the matter to be addressed and providing relevant documents related to such dispute. The meeting shall be held at the offices of the County or Agency, and shall be attended by representatives of County, Agency and City (if applicable) who have authority to resolve the dispute. The representatives shall confer in a good faith attempt to resolve the dispute until they either succeed or one or both Parties concludes that the dispute will not be resolved through additional meetings.

30. Entire Agreement. This Agreement, together with Exhibits A through I, constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and agreements with respect thereto.

31. No Merger; Survival of Representations. The obligations stated herein that are intended to operate after the Closing shall not merge with the transfer of title to the Property but shall remain in effect until fulfilled as provided herein. The representations and warranties made by the Parties shall survive the close of escrow.

32. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws.

33. Interpretation; Captions. The section headings used herein are solely for convenience and shall not be used to interpret this Agreement. The Parties acknowledge that this Agreement is the product of negotiation and compromise on the part of both Parties, and the Parties agree, that since both Parties have participated in the negotiation and drafting of this Agreement, this Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

34. Exhibits. Exhibits A through I attached hereto are incorporated herein by this reference and made a part of this Agreement.

35. Time. Time is of the essence of this Agreement and of each provision hereof.

36. No Joint Venture. The relationship of the Parties is solely that of Buyer and Seller with respect to the Property, and no joint venture or other partnership exists or is created between the Parties. Neither Party assumes any fiduciary relationship hereunder to the other.

37. No Third Party Beneficiaries. Nothing contained in this Agreement is intended by the Parties, nor shall any provision of this Agreement be deemed or construed by the Parties or by any third person, to be for the benefit of any third party, nor shall any third party have any right to enforce any provision of this Agreement or be entitled to damages for any breach by Agency or County of any of the provisions of this Agreement.

38. Amendments. This Agreement may be modified or amended only by an instrument in writing executed by both Agency and County.

39. Assignment Prohibited. This Agreement and the rights conferred hereunder may not be assigned by operation of law or otherwise absent the express written consent of the Parties; provided however, County may assign its rights to receive payments hereunder.

40. Escrow Cancellation Charges. If the escrow fails to close by reason of a default by Agency or County hereunder, such defaulting party shall pay all escrow or other Title Company charges. If the escrow fails to close for any reason other than default by Agency or County, then Agency and County shall each pay one-half of such charges.

41. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original, and all of which taken together shall constitute one agreement.

42. Further Assurances. County and Agency each agree to undertake such other actions as may reasonably be necessary to carry out the intent of this Agreement, including without limitation, the execution of any additional documents which may be required to effectuate the transactions contemplated hereby.

43. Severability. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby

44. Non-Liability of Officials, Employees and Agents. No member, official, employee or agent of Agency or County shall be personally liable in the event of any default or breach hereunder by either Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

COUNTY OF SANTA CLARA

**MILPITAS REDEVELOPMENT
AGENCY**

By: Blanca Alvarado
Blanca Alvarado, Chairperson
Board of Supervisors

By: Jose Esteves
Jose Esteves, Mayor/Chairperson

ATTEST: Phyllis A. Perez, Clerk
Board of Supervisors

ATTEST: Gail Blalock, Clerk

Ann Sloan
Ann Sloan
Chief Deputy Clerk
of the Board of
Supervisors

Gail Blalock

APPROVED AS TO FORM AND
LEGALITY:

[Signature]
County Counsel

APPROVED AS TO FORM:

[Signature]
City Attorney